CLERK'S OFFICE 2716

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 244.

HORACE B. DUNBAR, PLAINTIFF IN ERROR,

vs.

LOTTIE E. DUNBAR.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

FILED FEBRUARY 18, 1903.

(18,407.)

27163

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 15, 1902.

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1 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Lottie E. Dunbar, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court in the city of Washington District of Columbia on the twenty-eighth day of February next, pursuant to a writ of error filed in the clerk's office of the superior court for the county of Suffolk and Commonwealth of Massachusetts wherein Horace B. Dunbar of Seattle in the State of Washington is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Albert Mason chief justice of the superior court of Massachusetts, this first day of February, in the year of our Lord one thousand nine hundred and two.

[Seal of the Superior Court.]

ALBERT MASON,
Chief Justice of Superior Court.

2 BOSTON, MASS., 6 *February, A. D.* 1902.

Due and sufficient service of the within citation is hereby acknowledged.

LOTTIE E. DUNBAR,
By her attorney, FRANK H. STEWART.

3 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, holden at Boston, within and for the county of Suffolk, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court before you, or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between Lottie E. Dunbar plaintiff and Horace B. Dunbar defendant, in an action at law wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a

treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Horace B. Dunbar as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the twenty-eighth day of February next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the first day of February in the year of our Lord one thousand nine hundred and two.

ALEX. H. TROWBRIDGE,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—
ALBERT MASON,
Chief Justice Superior Court.

4 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, Boston, 5th February, A. D. 1902, }

And now, here, the judges of the superior court in and for said county of Suffolk make return of this writ by annexing hereto and sending herewith, under the seal of the said superior court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof, I Joseph A. Willard clerk of said superior court have hereto set my hand and the seal of said court this fifth day of February A. D. nineteen hundred two.

[Seal of the Superior Court.]

JOS. A. WILLARD, *Clerk.*

5 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

At a sitting of the superior court begun and holden at Boston within and for the county of Suffolk, on the first Tuesday of January A. D. 1902.

LOTTIE E. DUNBAR, of said Boston, Plaintiff, Appellant,
versus
HORACE B. DUNBAR, Cormorant of said Boston, Defendant. } 4632.

In an action of contract.

And the plaintiff says the defendant made a contract in writing a copy of which is hereto annexed marked "A," whereby the defendant promised to pay the plaintiff the sum of five hundred ($500) yearly for her support and maintenance, and four hundred dollars ($400) yearly for the support and maintenance of her child, Willie W. Dunbar. And the plaintiff says the defendant owes her under said contract the sum of seven hundred forty-nine dollars and ninety cents ($749.90) according to the account hereto annexed marked "B."

Copy Annexed.

"A."

Controversies having arisen concerning the agreement heretofore made between Horace B. Dunbar and Lottie E. Dunbar in September, 1889; in consideration of said Lottie E. Dunbar's forbearing of suit on such controversies, and in settlement of all such controversies and in substitution of said agreement of September 1889
6 and in further consideration of the release by Lottie E. Dunbar and in satisfaction of all claims under said original agreement.

That Horace B. Dunbar will pay to Lottie E. Dunbar during her life, or until she marries, for her maintenance and support, yearly, the sum of five hundred dollars, and will pay to her yearly for the support and maintenance of her child Harry H. Dunbar the sum of four hundred dollars until he shall attain the age of twenty-one years; and shall pay to her yearly for the support and maintenance of her child Willie W. Dunbar the sum of four hundred dollars until he shall attain the age of twenty-one years, all said sums to be paid in equal monthly installments between the first and tenth of each and every month—the first installment being for the month of May, 1896, shall be paid between the first and tenth of June, 1896.

And in addition to the foregoing said Horace B. Dunbar agrees to pay the further sum of one hundred dollars between the first and tenth of July, 1896, over and above the installment otherwise due for said month.

And the said Lottie E. Dunbar hereby agrees that she has not nor shall she have any other claim or demand against Horace B. Dunbar for contribution to her support and maintenance or for the support or education of said children save and except as fixed and limited by this agreement.

(Signed) HORACE B. DUNBAR. [SEAL.]
LOTTIE E. DUNBAR. [SEAL.]

Witness.
(Signed) GUSTAVUS H. WALD,
FRANK H. STEWART,
To L. E. D.

7 *Account Annexed.*

"B."

BOSTON, *Oct.* 2, 1899.

Horace B. Dunbar to Lottie E. Dunbar, Dr.

1. To installments due under covenant for alimony from December, 1898, to Oct. 1, 1899, 10 months at $41.66 a month	$416.60
2. To monthly allowance due her for support and maintenance of Willie W. Dunbar, from December, 1898, to Oct. 1, 1899, 10 months at $33.33 a month	333.30
3. Total	$749.90

To the damage of the said plaintiff, (as she says) the sum of one thousand dollars.

The writ in this case is dated October second A. D. 1899, and was duly entered in the municipal court of the city of Boston, on the fourteenth day of said October 1899, wherein on the eighteenth day of said October, 1899, said defendant filed his answer and his plea of discharge in insolvency and also amended his said answer, both as on file. Afterwards the plaintiff amended, by leave, her declaration so that the said copy annexed marked "A," shall read as follows, to wit:

"Controversies having arisen concerning the agreement heretofore made between Horace B. Dunbar and Lottie E. Dunbar in September, 1899; in consideration of said Lottie E. Dunbar's forbearance of suit on such controversies, and in settlement of all such controversies and in substitution of said agreement of Septem-
8 ber 1889 and in further consideration of the release by Lottie E. Dunbar and in satisfaction of all claims under said original agreement, Horace B. Dunbar agrees with the said Lottie E. Dunbar as follows:

That said Horace B. Dunbar will pay to Lottie E. Dunbar during her life, or until she marries, for her maintenance and support, yearly the sum of five hundred dollars, and will pay to her yearly for the support and maintenance of her child Harry H. Dunbar the sum of four hundred dollars until he shall attain the age of twenty-one years; and shall pay to her yearly for the support and maintenance of her child Willie W. Dunbar the sum of four hundred dollars until he shall attain the age of twenty-one years, all said sums to be paid in equal monthly installments between the first and tenth of each and every month—the first installment being for the month of May, 1896, shall be paid between the first and tenth of June, 1896.

And in addition to the foregoing said Horace B. Dunbar agrees to pay the further sum of one hundred dollars between the first and tenth of July, 1896, over and above the installment otherwise due for said month.

And the said Lottie E. Dunbar hereby agrees that she has not nor shall she have any other claim or demand against Horace B. Dunbar

for contribution to her support and maintenance or for the support maintenance or education of said children save and except as fixed and limited by this agreement.

(Signed) HORACE B. DUNBAR. [SEAL.]
LOTTIE E. DUNBAR. [SEAL.]

Witness-:
(Signed) GUSTAVUS H. WALD,
FRANK H. STEWART,
To L. E. D.

9 And after trial in said court, a single justice presiding without a jury, said court found for the defendant.

It was therefore considered by said municipal court on the twenty-second day of December, A. D. 1899, that said Horace B. Dunbar, defendant as aforesaid, recover against said Lottie E. Dunbar, plaintiff, as aforesaid, his costs of suit taxed at nine dollars and thirteen cents.

From which said judgment the said plaintiff appealed to this court on the first Monday of January, 1900, when she duly appeared by Frank H. Stewart, her attorney and entered the above appeal: said defendant appeared by George F. Williams, and James A. Halloran, his attorneys.

Thence the case was continued to the April sitting in said year, when the defendant amended by leave and consent, his answer as on file.

And the case was submitted to the court.

Whereupon after a full hearing the court found for the plaintiff and assessed damages in the sum of four hundred twenty-nine dollars and four cents.

And thereupon the plaintiff, by her said attorney, alleged sundry exceptions to the ruling and opinions of the court in certain matters of law.

Thence the case was continued to the July sitting 1900, when the defendant by his said attorneys, alleged sundry exceptions to the ruling and opinion of the court in certain matters of law.

10 Thence the case was continued to the October sitting 1900, when the case was reported to the supreme judicial court for the Commonwealth by the presiding judge for the consideration by said court of the law in the same.

Thence the case was continued to await the decision of said court from sitting to sitting to the October sitting, 1901, when on the thirty-first day of December in said year, it was ordered by said supreme judicial court for the Commonwealth, by its rescript, that the clerk of said superior court for said county of Suffolk, make the following entry under said case, in the docket of said court, viz.—

"Judgment to be entered for the plaintiff for both branches of her claim."

Thence the case was continued to the present January sitting, 1902.

And now on the sixth day of January, A. D. 1902, it is considered by the court that said Lottie E. Dunbar, plaintiff as aforesaid, re-

cover against said Horace B. Dunbar, defendant as aforesaid, the sum of eight hundred fifty-one dollars and sixty cents damages and costs of suit taxed at sixty-seven dollars and eighteen cents.

And thereafterwords, to wit on the first day of February, 1902, said defendant files his suggestion and notice of his intention to sue out a writ of error in the Supreme Court of the United States.

Whereupon upon said first day of February, 1902, upon petition of said defendant, a writ of error is granted and issued to the Supreme Court of the United States, accordingly.

Attest; *Attest:*

[Seal of the Superior Court.]

JOS. A. WILLARD, *Clerk.*

[Endorsed:] 4632. Lottie E. Dunbar *v.* Horace B. Dun-
11 bar. Transcript of record.

12 BOSTON, MASS., *January* 31, *A. D.* 1902.

I hereby approve the amount of the penalty of the within bond at eighteen hundred dollars.

FRANK H. STEWART,
Attorney for Lottie E. Dunbar.

United States Supreme Court.

Bond on Writ of Error.

Know all men by these presents, that we, Horace B. Dunbar of Seattle in the State of Washington, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto Lottie E. Dunbar in the full sum of eighteen hundred ($1800) dollars to be paid to the said Lottie E. Dunbar, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of January in the year of our Lord one thousand nine hundred and two.

Whereas, lately in the superior court for the county of Suffolk and State of Massachusetts in a suit depending in said court, between said Lottie E. Dunbar and said Horace B. Dunbar judgment was rendered against the said Horace B. Dunbar and the said Horace B. Dunbar having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Lottie E. Dunbar citing and admonishing her to be and appear in the Supreme Court of the United States at Washington on the twenty-eighth day of February next.

Now the condition of the above obligation is such, that if the said Horace B. Dunbar shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then

the above obligation to be void; else to remain in full force
13 and virtue.

HORACE B. DUNBAR. [SEAL.]
AMERICAN SURETY COMPANY
OF NEW YORK,
[CORPORATE SEAL.] By S. N. ALDRICH,
Its Resident Vice-President, and
WALLACE H. HAM,
Its Resident Assistant Secretary.

Sealed and delivered in presence of
THOMAS B. HARDIN,
For H. B. D.

Approved:
ALBERT MASON,
Chief Justice of Superior Court.

Copy.
Attest: JOS. A. WILLARD, *Clerk.*

14 [Endorsed:] 4632 9 Horace B. Dunbar appellant in error *vs.* Lottie E Dunbar appellee in error. Appeal bond. 4 Feb. 1902. Copy.

15 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Superior Court.

LOTTIE E. DUNBAR, Appellee in Error,
vs.
HORACE B. DUNBAR, Appellant in Error. } Petition for Writ of Error.

To the honorable the superior court:

Your petitioner, Horace B. Dunbar, formerly of Cincinnati in the State of Ohio, now of Seattle in the State of Washington, shows unto your honors that heretofore, to wit, on the sixth *say* of January A. D. 1902, at Boston in the said county of Suffolk, upon an action at law in which Lottie E. Dunbar of said Boston was plaintiff and your petitioner was defendant, final judgment was entered against your petitioner in the superior court within and for the county of Suffolk aforesaid after a trial without a jury of said cause in said superior court resulting in said court finding and ordering judgment for said Lottie E. Dunbar as appears of record therein; that afterwards said finding and said cause were reported by said superior court to the supreme judicial court where said cause was duly heard and determined against your petitioner as aforesaid, and said final judgment was entered as aforesaid in said superior court in accordance with the order of said supreme judicial court, said su-
16 perior court being the highest court of law in said Commonwealth in which a decision could be had in said suit as appears by the records of said superior court, and the amount of

said judgment exceeds the sum of five hundred dollars, and if sustained compels the payment of a sum in excess of five thousand dollars.

And your petitioner says that in the trial of said case there was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, and wherein was drawn in question the validity of a statute of, and authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties and laws of the United States, and the decision was in favor of such their validity and against the contention and interest of your petitioner; and wherein was drawn in question the construction of a clause of the Constitution, and of a treaty and statute of, and commission held under the United States, and the decision was against the title, right, privilege and exemption specially set up and claimed under such clause of the said Constitution, treaty, statute and commission by your petitioner in the said trial as more particularly appears by the pleadings therein and the record thereof, and a manifest error hath happened to the great damage of your petitioner, and your petitioner shows said error in his assignment of errors hereto annexed and made a part of this petition.

Wherefore, your petitioner prays that a writ of error, to the
17 Supreme Court of the United States may issue in due form of law and he will ever pray.

HORACE B. DUNBAR,
By his attorneys, GEO. FRED WILLIAMS,
JAMES A. HALLORAN.

LOTTIE E. DUNBAR, Appellee in Error,
v.
HORACE B. DUNBAR, Appellant in Error.

Assignment of Errors in the Matter of the Petition of Horace B. Dunbar, Appellant.

On this sixteenth day of January, A. D. 1902 comes the said Horace B. Dunbar by Geo. Fred Williams and James A. Halloran, his attorneys, and shows that in the record and proceedings in the case of Lottie E. Dunbar *v.* Horace B. Dunbar, wherein a final judgment was entered against said Horace B. Dunbar, appellant, in the superior court within and for the county of Suffolk and Commonwealth of Massachusetts, in an action at law had between said Lottie E. Dunbar and Horace B. Dunbar, there is manifest error in this, to wit:

1. That the supreme judicial court for said Commonwealth erred in its finding, ruling and order that the discharge of the petitioner Horace B. Dunbar in bankruptcy under the national bankruptcy law of 1898 did not operate as a full and complete bar to the right of said Lottie E. Dunbar to recover on her claim in respect to, and as a release from

18 (*a*.) Instalments due to said Lottie E. Dunbar for the support and maintenance of said Lottie E. Dunbar.

(*b*.) Instalments due for the support and maintenance of Lootie E. Dunbar's son Willie W. Dunbar.

In consequence of which final judgment in the superior court for Suffolk county in said Commonwealth was entered for said plaintiff, Lottie E. Dunbar.

2. That the supreme judicial court for said Commonwealth erred in its finding, ruling and order that th claim of the plaintiff, Lottie E. Dunbar, was not a debt provable in the bankruptcy proceedings of the petitioner, Horace B. Dunbar, from which he was released by his discharge, in consequence of which final judgment in the superior cpurt for Suffolk county in said Commonwealth was entered for said plaintiff, Lottie E. Dunbar.

3. The supreme judicial court erred in its finding, ruling and order that the obligations imposed upon the petitioner, Horace B. Dunbar by his contract of 1896, were conti-gent claims within the meaning of the national bankruptcy law of 1898, both as to (*a*) instalments due to plaintiff, Lottie E. Dunbar, for the support and maintenance of said Lottie E. Dunbar, and (*b*), instalments due to the plaintiff Lottie E. Dunbar for the support and maintenance of her son, Willie W. Dunbar, in consequence of which final judgment in the superior — for Suffolk county in said Commonwealth was entered for said plaintiff, Lottie E. Dunbar.

HORACE B. DUNBAR,
By his attorneys, GEO. FRED WILLIAMS &
JAMES A. HALLORAN.

Copy.
Attest: JOS. A. WILLARD, *Clerk*.

19 [Endorsed:] 4632 8 Commonwealth of Mass. Suffolk, *ss:* Superior court. Lottie E. Dunbar appellee in error *v.* Horace B. Dunbar p't'r & appellant in error Copy. Petition for writ of error to the United States Supreme Court. Writ of error granted & iss'd Feb. 1, 1902. E Suffolk clerk's office Filed 1 1902 Feb. Jos. A. Willard cl'k superior court From the office of Geo. Fred Williams & James A. Halloran # 209 Washington St. Boston—Mass. Room 50.

20 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Superior Court.

LOTTIE E. DUNBAR
vs.
HORACE B. DUNBAR.

And now comes the defendant in the above-entitled case and represents that it is his intention to sue out a writ of error in the Supreme *judicial* Court of the United States.

By his attorney, GEO. FRED WILLIAMS.

Copy,
Attest: JOS. A. WILLARD, *Clerk*.

21 [Endorsed:] 4632 7 Suffolk, *ss:* Superior court. Lottie E. Dunbar *vs.* Horace B. Dunbar Copy. Defendant's notice of intension to sue out writ of error in the Supreme Court of the United States E Suffolk clerk's office Filed 1902, 4 Jan. Jos. A. Willard, cl'k superior court. From the office of Geo. Fred Williams 209 Washington St. Boston.

22 COMMONWEALTH OF MASSACHUSETTS:

BOSTON, *February* 12, 1902.

I certify the annexed to be a true copy of the opinion of the supreme judicial court in the case of Lottie E. Dunbar *vs.* Horace B. Dunbar decided on the thirty-first day of December, 1901.

HENRY W. SWIFT,
Reporter of Decisions.

23 BARKER, *J.:*

The action is in contract to recover ten instalments of $74.99 each, alleged to be due to the plaintiff in part for her own support and in part for that of her minor son, under a sealed instrument executed by herself and the defendant in the year 1896. After a ruling that so much of the demand as related to the support of the son was barred by the defendant's discharge in bankruptcy, and a finding for the plaintiff for so much as related to her own support, and an order of judgment for the plaintiff upon the finding, the case comes here upon a report which states some facts that seem to have been admitted or not disputed at the trial, and upon the evidence there introduced. The court below refused to rule that upon all
24 the evidence the plaintiff was not entitled to recover, and also refused to rule that the discharge in bankruptcy was not a bar to any part of the claim; and ruled that the discharge was a bar to so much of the demand as was alleged to be due for the support of the son. By the terms of the report, if the rulings were right the judgment is to be affirmed; otherwise, such judgment is to be entered as law and justice may require.

The defendant's contentions are that his discharge in bankruptcy is a bar to the suit, and also that the agreement sued upon was without consideration; and further, that the agreement is void, because in substitution for an earlier one founded upon a collusive arrangement to enable him to procure a divorce from the plaintiff.

It is immaterial whether there was collusion in the divorce suit, and whether the agreement of September, 1889, was invalid by reason of such collusion or for want of consideration. That agreement was made and performed by the defendant for several years. When he broke it the plaintiff asserted that it was valid and binding, and the agreement of 1896, now sued on, was made in settlement of the controversy so arising. The compromise of this controversy was a sufficient consideration for the agreement of 1896.

Medway v. Milford, 21 Pick. 349, 353. *Barlow v. Ocean Ins.*
25 *Co.* 4 Met. 270, 275. *Cobb v. Arnold*, 8 Met. 403, 405. *Tuttle v. Tuttle*, 12 Met. 551, 554. *Allis v. Billings*, 2 Cush. 19, 26.

Whitney v. Haverhill Ins. Co. 9 Allen, 35. *Easton v. Easton*, 112 Mass. 438, 443. *Cutter v. Cochrane*, 116 Mass. 408. *Rollins v. Marsh*, 128 Mass. 116, 120. *Dean v. Skiff*, 128 Mass. 174.

As there was an actual consideration for the agreement of 1896, it is immaterial whether it was to be construed as entered into in Ohio or in Massachusetts.

Whether the bankruptcy act of 1898 allows the proof of contingent claims must depend finally upon the construction of the statute by the Federal courts. This court in *Morgan v. Wordell*, 178 Mass. 350, expressed the opinion that one class of contingent claims was not so provable, and in *Goding v. Rosenthal*, (61 N. E. Rep. 222,) followed that expression of opinion by a decision to the same effect. If claims of the nature then held to be not provable are not provable, we see no ground for holding either class of obligations imposed upon the defendant by his contract of 1896 to be provable.

The result is that the defendant's discharge in bankruptcy was not a bar to either branch of the plaintiff's claim now in suit;
26 and that the plaintiff should have judgment for all of the unpaid instalments declared for, with interest and costs.

So ordered.

Copy
Att. JOS. A. WILLARD, *Clerk.*

26½ [Endorsed:] Dunbar *vs.* Dunbar Certified copy of the opinion of the supreme judicial court.

27 (Copy.)

COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, Dec. 31, 1901.

In the case of—

LOTTIE E. DUNBAR
vs.
HORACE B. DUNBAR

pending in the superior court for the county of Suffolk,

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court, viz.:

Judgment to be entered for the plaintiff for both branches of her claim.

J. M. B.
Dec. 31, 1901.
By the court:

HENRY A. CLAPP, *Clerk.*

Copy,
Att.: JOS. A. WILLARD,
Clerk of Superior Court.

28 *Brief Statement of the Grounds and Reasons of the Decision.*

1. The question of collusion was immaterial and also the question whether the original agreement was void for collusion in obtaining the divorce or for want of consideration, and as the agreement sued on had a sufficient consideration in the compromise of the controversy as to the previous agreement whether the agreement sued on was to be considered as made here or elsewhere was also immaterial.

2. Contingent claims are not provable under the bankruptcy act of 1898 and hence no part of the plaintiff's claim is barred by the defendant's discharge.

29 [Endorsed:] 6. No. 4632. Supreme judicial court. For the Commonwealth. Rescript Suffolk county Lottie E. Dunbar *vs.* Horace B. Dunbar. Copy. E Suffolk clerk's office Filed 1901 31 Dec. Jos. A. Willard cl'k superior court.

30 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Docket Entries.

Superior Court.

Frank H. Stewart.
J. O. Teele.
Geo. Fred Williams.
Jas. A. Halloran.
April 4, 1900.

LOTTIE E. DUNBAR
vs.
HORACE B. DUNBAR. } 4632.

Answer. Plea of discontinuance in bankruptcy.
Amended answer and plaintiff's amended declaration below.
1900, April.—Defendant's motion to amend answer allowed.
Court finds for plaintiff for $429.04. Plaintiff proposed exceptions (4) Time for filing defendant's exceptions extended to August 1, 1900.
1900, Aug. 31.—Defendant's proposed exceptions
" Oct. 25.—Report to supreme judicial court (5)
1901, 31 Dec.—Rescript Judgment to be entered for the plaintiff for both branches of her claim (6)
1902, Jan. 4.—Notice of defendant's intention to sue out a writ of error in supreme judicial court of United States.
1902, Feb. 1.—Petition for writ of error to United States Supreme Court (8) and writ of error granted and issued. Bond filed to prosecute etc.
Copy,
Attest: JOS. A. WILLARD, *Clerk.*

31 [Endorsed:] 4632 Dunbar *vs.* Dunbar Docket entries Copy.

32 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

Superior Court.

LOTTIE E. DUNBAR
v.
HORACE B. DUNBAR.

Report.

This was an action of contract to recover for ten months' instalments of $74.99 each, which were alleged to be due and payable to the plaintiff for the support and maintenance of the plaintiff and the plaintiff's son, Willie W. Dunbar, under an instrument in writing under seal, as set forth in the plaintiff's declaration. The pleadings are made a part hereof.

At the trial before the court without a jury, it was admitted by the counsel for the plaintiff that the defendant was duly discharged in bankruptcy on April 24, A. D. 1899, and that the plaintiff's claim under the instrument in suit was proved for the instalments that had accrued up to and were unpaid at the date of the adjudication in bankruptcy.

It is further admitted and agreed that there was a divorce granted to the defendant in Ohio from the plaintiff, on the ground of her desertion, which became absolute as soon as the court granted it on August 8, 1889.

The record of the divorce proceedings, duly certified and authenticated, was produced and put in evidence. From this record it appeared that at a separate session of the court of common pleas of Hamilton county, Ohio, in and for the first judicial district, held at the court-house in the city of Cincinnati, county of Hamilton and State of Ohio, in the term of July, A. D. 1889, before the Honorable Clement Bates, one of the judges of said court, Horace B. Dunbar, plaintiff therein, filed in the office of the clerk of said court, on the 22d day of June, A. D. 1889, his petition for divorce and precipe against Lottie E. Dunbar, defendant therein, in which petition he set forth his residence in Ohio, in the county of Hamilton; that on or about August 19th, A. D. 1871, he was married to the defendant at Boston, Mass., and that there were then living with the defendant children of their said marriage, one boy, Harry, aged twelve years,
and one boy, Willie W., aged nine years; that plaintiff had
33 been faithful to his marital duties, but that defendant had, in disregard of her marital duties, been wilfully absent for more than three years last past from the plaintiff. Wherefore, the plaintiff prayed that he might be divorced from the defendant, and have such other relief as was proper. L. K. Torbet appeared as attorney for the plaintiff.

It further appeared from said record that on said 22d day of June, A. D. 1889, the affidavit of said Horace B. Dunbar was filed in the office of the clerk of said court, setting forth that the service of the summons could not be made on the defendant, she being a non-

resident and living at Ashburnham, Mass., and not then in the State of Ohio.

And afterwards, to wit, on the 28th day of June, A. D. 1889, the sheriff of said Hamilton county filed in the clerk's office of said court, and made due return of said summons, with a return endorsed thereon as follows: "Cincinnati, June 27th, 1889. The within-named defendant not found. Leo Schott, sheriff, by Geo. W. Draper, deputy."

And afterwards, to wit, on the 28th day of June, A. D. 1889, proof of publication was filed in the office of the clerk of said court as follows: "Legal notice, court of common pleas, Hamilton county, Ohio. Case No. 84290, *Horace B. Dunbar v. Lottie E. Dunbar.* The above-named defendant, whose last-known place of residence was Ashburnham, Mass., is hereby notified that the plaintiff herein on the 22d day of June, 1889, filed his petition in this case, praying for a divorce upon the grounds of wilful absence of the defendant for three years last past; the defendant is notified to answer or demur to said petition within six weeks from June 24th, 1889, the date of the first publication of this notice, or this cause will stand for trial and decree. Signed, L. K. Torbet, attorney for plaintiff."

On the 28th day of June, A. D. 1889, J. B. Peaslee, clerk, by W. H. Sargent, deputy, certified under his hand and the seal of the court, that he mailed a copy of the above publication together with a copy of petition and original summons to Lottie E. Dunbar, Ashburnham, Worcester county, Mass.

And it further appeared from said record that afterwards, to wit, on the 6th day of August, A. D. 1889, an order of court was made and entered on the court journal setting forth that the plaintiff by his attorney offered proof of publication, of the pendency and prayer of the petition for divorce, and the court finds said publication and proof in all respects regular and according to law, and hereby approves the same.

Then follows the affidavit of Geo. W. Cunningham, clerk of the publishers of the Evening *Post*, a newspaper printed and of general circulation in Hamilton county, Ohio, setting forth that the notice as above set forth had been published in said Evening *Post* for six consecutive Mondays, commencing on Monday, June 24th, 1889, and subscribed and sworn to before William H. Dicks, notary public, on August 6th, A. D. 1889.

34 And it further appeared from said record that afterwards, to wit, on the 9th day of August, A. D. 1889, the court made the following order, which was entered upon its journal:—

Court of Common Pleas of Hamilton County, Term of July, A. D. 1889.

HORACE B. DUNBAR, Plaintiff,
v.
LOTTIE E. DUNBAR, Defendant. } No. 84290. Decree of Divorce.

Now comes the plaintiff and the defendant having been legally summoned by publication and having failed to appear, the court find defendant in default for answer and demurrer to said petition

and find that the allegations thereof are confessed by defendent to be true.

The court also find that the plaintiff at the time of filing his petition, had been a resident of the State of Ohio for one year next preceding the same and was at the time a *bona fide* resident of this county of Hamilton, and that the parties hereto were married as in said petition set forth.

The court further find upon the evidence adduced that the defendant has been guilty of wilful absence for more than three years last past from plaintiff and that, by reason thereof, the plaintiff is entitled to a divorce as prayed for.

It is therefore ordered and adjudged by the court that the marriage contract heretofore existing between the said Horace B. Dunbar and Lottie E. Dunbar be and the same hereby is dissolved and both parties are released from the obligations of the same, that the custody of the children of such marriage, one boy, Harry H. Dunbar, aged 12 years, and Willie W. Dunbar, aged 9 years, be and the same are to remain in charge and under the control of the said Lottie *T.* Dunbar, the said Horace B. Dunbar to have the privilege of seeing said children at all reasonable times.

It is further ordered that the plaintiff pays the costs of this proceeding.

Early in May, 1889, and before the defendant's libel for divorce was filed, L. K. Torbet, of Cincinnati, Ohio, then defendant's attorney, came from Cincinnati, the home of the defendant, to Ashburnham, Mass., where the plaintiff was then living. Mr. Torbet was accompanied by a brother of the defendant. They made known to the plaintiff that the defendant was about to seek a divorce. After the matter had been discussed, as appears in evidence, the plaintiff and Mr. Torbet went to Concord, N. H., that Rt. Rev. Bishop Niles, of that city, might be consulted. A conference was had between Mr. Torbet and Bishop Niles, at the latter's home, on the 10th day of May, A. D. 1889. As a result of the conversation had at that time the letters, copies of which are hereto annexed as Exhibits 4, 5, 6, 7 and 8, were written. After the divorce had been granted to the defendant the letter, a copy of which is hereto annexed as Exhibit 9, was written by Mr. Torbet to Bishop Niles, and with this letter was enclosed the so-called green agreement, a copy of which is hereto annexed as Exhibit 1. In 1896 the payments under the so-
35 called green agreement were in arrears, and thereupon the instrument upon which this suit is brought, a copy of which is hereto annexed and marked "Exhibit 2," was executed. The plaintiff produced these Exhibits 1 and 2 at the trial. Payments were made as called for by these last instruments until some months prior to December 2d, A. D. 1898.

On December 2d, A. D. 1898, the defendant was adjudged a bankrupt on his voluntary petition in the United States district court in bankruptcy, southern district of Ohio, western division, and on April 24th, A. D. 1889, was discharged from all debts and claims which are made provable by the acts of Congress relating to bankruptcy against his estate, which existed on the 2d day of December,

A. D. 1898, except such debts as are here excepted by law from the operation of a discharge in bankruptcy, as appears from a certified copy of the bankruptcy proceedings which is made a part of defendant's answer.

It further appeared that the plaintiff, at the first meeting of the creditors of the defendant in bankruptcy proceedings, which was held before the referee appointed therein, appeared by an attorney, who produced and filed his power of attorney duly executed, and filed her claim for $691.63, for instalments due to December 2d, A. D. 1898. A transcript of the bankruptcy proceedings was put in evidence, from which it appeared that the plaintiff was named as a creditor in the bankruptcy schedule of the defendant as follows:—

Lottie E. Dunbar, Charlestown, Mass., Alimony due up to present time.	540.00
Lottie E. Dunbar, Charlestown, Mass., Alimony payable yearly.	1300.00

A power of attorney from Horace B. Dunbar to L. K. Torbet was produced and put in evidence, a copy of which is hereto annexed, marked "Exhibit 3."

The present action was brought to recover for instalments which accrued subsequent to the adjudication in bankruptcy. The evidence in the case is as follows.

The following evidence was introduced.

(The second agreement was offered in evidence, a copy of which is annexed as Exhibit 2.)

LOTTIE E. DUNBAR, the plaintiff:

Q. What is your name?
A. Lottie E. Dunbar.
Q. You are the plaintiff in the case?
A. I am.
Q. Do you remember when Horace B. Dunbar obtained a divorce from you?
A. I do.
36 Q. What was the first that you knew about those proceedings?
A. He sent a lawyer from Cincinnati.
Q. And what was the name of that lawyer?
A. Mr. L. K. Torbet.
Q. Is he present in court?
A. Yes, sir.
Q. Where did you meet Mr. Torbet?
A. First in Ashburnham.
Q. Where?
A. In Mrs. Davis' house, where I was boarding.
Q. Any one accompany Mr. Torbet?
A. Mr. Dunbar, the defendant's brother.
Q. What happened in Ashburnham? You had an interview in relation to the divorce case?

A. I did; and we spoke of Bishop Niles, and he said he would go to Bishop Niles and I would go with him; Concord, N. H.
Q. Who is Bishop Niles?
A. A mutual friend of Mr. Dunbar and myself.
Q. Did you go to Concord, N. H.?
A. I did.
Q. And did you there meet Mr. Torbet?
A. Yes, sir.
Q. Did you together there meet Bishop Niles?
A. No, sir.
Q. State what happened there.
A. Mr. Torbett had a long conversation with Bishop Niles.
Q. Were you present?
A. No, sir.
Q. What else took place?
A. I can't tell; only conversation took place between Mr. Torbet and the bishop and letters passed between Mr. Torbet and the bishop.
Q. And those letters came into your hands afterwards?
A. They came to the bishop and he sent them to me and I kept them and gave them to you.

COUNSEL FOR PLAINTIFF: We have some letters here which passed between Mr. Torbet and Bishop Niles.
The COURT: All preceding the agreement of '96?
COUNSEL FOR PLAINTIFF: Yes, sir.
The COURT: What is there to this case?
COUNSEL FOR DEFENDANT: I would suggest that there is a further defence beyond bankruptcy; the defence of want of consideration, and the illegality of the agreement. We claim it is an Ohio contract. The law there is directly to the contrary of what it is in Massachusetts.

Q. I will show you this instrument (Exhibit 2). Whose signatures are those?
A. Mr. Dunbar's.
Q. And whose is this?
A. My own.

The COURT: The execution of the contract declared on is admitted by the pleadings.

Q. Have you been paid any sums of money under this second agreement?
A. I have.
37 Q. Up to what time were you paid?
A. Until a year ago last June.
Q. A year ago last June, you say?
A. Yes, sir; two years this coming June.
Q. For what month was that due, do you remember?
A. I don't understand.
Q. What instalment of alimony were you not paid?
A. For the whole two years from May. The last I received was May, 1898. It will be two years this coming June.

Q. Then in December, 1898, you proved in bankruptcy?
A. Yes, sir.
Q. And since that time you have received no money at all?
A. No, sir.
Q. And does that also include the allowances that were to come to your son Willie?
A. Yes, sir.
Q. And Harry has become of age?
A. Yes, sir.
Q. When did Harry become of age?
A. He is twenty-two this last October, and Willie is two years younger.

COUNSEL FOR PLAINTIFF: If we are to rely strictly on this contract, we will not go further now.

Q. At the time this second agreement (*Exhibit* 2) was made, where were you living?
A. Boston; Charlestown.

Cross-examination of LOTTIE E. DUNBAR:

Q. Mrs. Dunbar, at the time this agreement was made, Mr. Stewart was your counsel, was he?
A. He was.
Q. Was Mr. Horace B. Dunbar in Boston?
A. No, sir; in Cincinnati.
Q. And with whom were the negotiations had that brought about this contract?
A. With Mr. Stewart.
Q. No; by whom with you in behalf of Mr. Dunbar?
A. Mr. Torbet.
Q. Is that true in regard to this 1896 contract?
A. Mr. Torbet had nothing to do with that.
Q. I am referring to that '96 contract signed by yourself and Mr. Dunbar. The first paper was only signed by Mr. Dunbar.
A. The green one; yes, sir.
Q. Now, this second one was signed by you and Mr. Dunbar; now do you recall that when this agreement was drawn up it was signed by you and then sent out to be signed by Mr. Dunbar?
A. Yes, sir.
Q. And Mr. Dunbar was then living in Ohio?
A. Yes, sir.
Q. So that it was signed by you and forwarded to him for signature, and later you got it back?
A. Yes, sir.
Q. Signed by him?
A. Yes, sir.
Q. And he had been living there for several years?
A. Yes, sir.
Q. And you expected that the payments which were to be made to you under these contracts were to be made by him from there?

A. Yes, sir.
Q. He was a hotel-keeper, was he not?
A. Yes, sir.
Q. And did send for some time the amounts that — set forth in this agreement?
A. Yes, sir.

COUNSEL FOR DEFENDANT: Now, your honor, with respect to the *lex* of this contract, I claim that that was an execution by Mr. Dunbar in Cincinnati, which completes that contract and places that contract in Ohio.

Redirect examination of LOTTIE E. DUNBAR:

Q. Was there more than one of these contracts, do you know?
A. I don't think so.
Q. How did you receive the money that was paid under this?
A. By check.
Q. How was that made payable?
A. To Lottie E. Dunbar, signed Horace B. Dunbar.
Q. Have you always been living in Massachusetts during this time?
A. Yes, sir.

(*Noon recess.*)

LOTTIE E. DUNBAR recalled for examination by counsel for defendant, and testified as follows:—

Q. You testified, Mrs. Dunbar, upon your direct examination, that the first you heard of the divorce proceedings was through the brother of Mr. Dunbar and Mr. Torbet?
A. Yes, sir.
Q. And when was it that this information first came to you?
A. That was the first. It was the 8th of August, I think.
Q. Wasn't it in May? The eighth of August was the date of the decree.
A. It was at the time he came to Ashburnham.
Q. Suppose we put that in the month of May. The correspondence will show that to be in May.
A. Yes, sir.
Q. It was previous to the writing of the letter by Mr. Dunbar or his attorney to Bishop Niles, and that was dated in May.
A. Yes, sir.
Q. Now, Mr. Torbet came to you?
A. Yes, sir.
Q. In Ashburnham?
A. Yes, sir.
Q. You were then residing there?
A. Yes, sir.
Q. And Mr. Dunbar was residing in Cincinnati, as you understood?
A. Yes, sir.

Q. What did Mr. Torbet say to you?

A. Said Mr. Dunbar wished to get a divorce.

39 Q. Upon what ground? Did he state?

A. No, he did not. He didn't state particularly. He said that he wanted a bill of divorce, and as I understood it was because I left him, but I came because he told me to. It wasn't intentional. I would have stayed if I could. I came for my boy's health.

Q. At that time you met Mr. Torbet alone or his brother and Mr. Torbet?

A. They were both together, Mr. Dunbar's brother and Mr. Torbet.

Q. It was suggested at that time that you wished to consult with Bishop Niles?

A. Mr. Torbet said that he would like to consult with Bishop Niles, and I went with Mr. Torbet.

Q. What were your relations at that time with Bishop Niles?

A. Mutual friends.

Q. Had you resided in the family of Bishop Niles?

A. Yes, sir.

Q. How long?

A. A number of years.

Q. In what way?

A. Like his own child; as one of his own family.

Q. Was that before you were married?

A. Yes, sir.

Q. How old were you when you were married?

A. I was 19, I think.

Q. And it was on account of your confidence in him and your pleasant relations with him that you consulted him?

A. Yes, sir.

Q. And Mr. Torbet suggested that you should go and consult with him, did he not?

A. Yes, sir.

Q. What discussion was had at that time concerning the divorce proceedings and what did Mr. Torbet want of you?

A. I hardly know how to answer that question.

(*This was objected to by counsel for plaintiff.*)

Mr. TEELE: It has already intimated that the correspondence appears between two of these parties.

COUNSEL FOR DEFENDANT: I am not trying to prove the writings now. I don't think it was in writing.

Q. What you had to say to Mr. Torbet in Ashburnham wasn't the letter which was drawn up in Concord?

A. No sir.

Q. You had a general discussion there in Ashburnham, did you not?

A. Yes, sir.

Q. What was the nature of his request to you, and what your response?

A. The nature of Mr. Torbet's request?

Q. Yes.
A. Mr. Dunbar sent him on as his legal attorney for a divorce.
Q. And what did he ask you?
A. He said Mr. Dunbar wished to get a divorce, and there was no use in my doing anything about it because he would have it, no matter what I done.
Q. You talked over the matter of divorce with him?
A. In Ashburnham?
Q. Yes.
A. Yes.
Q. And Mr. Torbet wanted you to let the divorce go through without your appearing and defending, did he not?
A. I think so. I hardly know what he did do then.
Q. Isn't that so? Wasn't that the proposition, that Mr. Dunbar wanted the divorce to go through without contest?
A. I think so.
Q. In Ashburnham?
A. Yes, sir.
Q. And that was what you went up to discuss with Bishop Niles?
A. Yes; and I went up with Mr. Torbet.
Q. That was your talk in Ashburnham, and you went up with Mr. Torbet to see Bishop Niles, to decide whether you should make such an agreement?
A. Yes, sir.
Q. Did you discuss with Mr. Torbet, in Ashburnham, as to what the ground should be upon which he would claim a divorce?
A. I think so; as I say, I don't hardly recall what I did do then. It was like a thunderbolt to me. I had no idea of any such thing.
Q. That is the first you had heard of it, and you were much distressed by it naturally?
A. Yes, sir.
Q. And was there anything said as to making provision for you, in case that occurred?
A. The question of alimony.
Q. What was the suggestion then made as to alimony?
A. That he would support the children and myself.
Q. And did he state how much he was ready to give?
A. No, sir; he did not.
Q. You had this general conversation with him and came to no determination,—no written agreement at Ashburnham?
A. No, sir.
Q. Then you proceeded to Concord?
A. Yes, sir.
Q. And you saw Bishop Niles?
A. Yes, sir.
Q. And did you tell him what Mr. Torbet had said?
A. Yes, sir.
Q. Did you consult with Bishop Niles before you talked with Mr. Torbet again?
A. I did.
Q. What did you ask Bishop Niles to do for you?

A. I merely told him my case, and wanted to know what I could do,—what I could do in such a case as that.

Q. You asked his advice as to what you could do?

A. Yes, sir.

Q. Could do with respect to what?

A. As to Mr. Dunbar's deserting me or wanting a divorce, because I knew of no reason.

Q. Did you tell Bishop Niles at the time whether you had actually deserted Mr. Dunbar?

A. No, sir; I did not. That was not my intention, any such thing as that.

Q. And you don't think now that you had deserted Mr. Dunbar?

A. No, sir.

Q. Did you say to Mr. Torbet whether or not you had deserted Mr. Dunbar?

41 A. I don't remember whether I did or not; as I say, I wasn't myself at all while Mr. Torbet was in Ashburnham. I was entirely broken down.

Q. Did you in Concord?

A. I did. I had no intention to desert Mr. Dunbar.

Q. Whether or not you told Mr. Torbet that?

A. No; I did not. I told Bishop Niles I had no intention to desert him, and I did not.

Q. What did you say to Bishop Niles about conferring with Mr. Torbet?

A. I asked him if he would let Mr. Torbet come there to see him, and I asked him if he would see Mr. Torbet and do the best he could for me, as I seemed to have hardly any one else to go to at that time.

Q. He should do the best he could for you?

A. Yes, sir.

Q. About what?

A. About the divorce or my trouble about Mr. Dunbar sending a lawyer from Cincinnati to get the divorce.

Q. Did you give him any further instructions?

A. No, sir.

Q. Did you tell him what he might or might not do with respect to you?

A. No, sir.

Q. Now, you are aware that after that a consultation was had between Mr. Torbet and Bishop Niles?

A. Yes, sir.

Q. And were you not present at one of those meetings?

A. No, sir; I don't think I was.

Q. Are you quite sure about that?

A. I don't think I was.

Q. How many meetings were there?

A. I don't think we went but once. I don't know that we did. I don't think we went there twice.

Q. You went to the house?

A. Yes, sir.

Q. And you went with Mr. Torbet?
A. No; I went by myself.
Q. Oh, and then Mr. Torbet came?
A. Yes, sir.
Q. Do you recall that you retired from the room where they were consulting?
A. Yes, sir.
Q. And do you recall whether you heard any of the conversation between them?
A. No; I didn't hear it; I was in another room.
Q. Now, when the consultation was over, Bishop Niles informed you as to what had occurred, did he not?
A. Yes sir.
Q. What did he tell you?
A. He said Mr. Torbet had come from Mr. Dunbar for a divorce, and I don't know what else he said, and he asked him if he wanted to marry again, and he assured him he did not. He said he did not; had no intention; he wanted to be free. He had no intention of marriage at all, and assured him he did not.
Q. Did he say anything to you about drawing up an agreement?
A. Mr. Torbet?
42 Q. Mr. Torbet; or of drawing up a memorandum later?
A. There were letters passed.
Q. Did Bishop Niles at that time show you a letter which they had drafted together?
A. Yes, sir; I think so.
Q. You think he did?
A. The letters were passed back and forth.
Q. Now, look that over, Mrs. Dunbar, and see if that refreshes your recollection as to what was then concluded (*handing witness a paper Exhibit* 4).
A. Mr. Williams, I can't see to read that very much. My eyes are very poor.

COUNSEL FOR DEFENDANT: If I may read it to the witness. (*Doing so.*) "Concord, N. H., 5/11/1889. Bishop W. W. Niles, Concord, New Hampshire. Reverend Sir:—" (I read this to you so that you may see whether you recognize it.) "After our lengthy conversation last evening relative to the affairs of Mr. and Mrs. H. B. Dunbar, I beg leave to make the following proposition on behalf of H. B. Dunbar, Esq., of Cincinnati, Ohio. In the event of an action for divorce being filed and the same being granted to H. B. Dunbar without a contest, he is to pay Mrs. Lottie E. Dunbar the sum of five hundred dollars yearly so long as she remains unmarried, and to the children of said marriage, Harry H. and Willie W., two hundred dollars each yearly until they arrive at the age of fourteen years; after the age of fourteen years they to receive such extra allowance yearly as will give them a good and sufficient education befitting their station in life, and a suitable maintenance until they reach the age of twenty-one. You are to advise the accepting of the within proposition and in no event are you to assist with advice or money

contest for divorce as before mentioned. If such be done or the divorce contested this letter is to be returned to the undersigned and be of no effect. Very truly yours, L. K. Torbet, attorney for H. B. Dunbar."

Now before you answer whether you recall that letter as it is, I want to warn you that certain words here are stricken out; that is, with a pencil: "In the event of an action for divorce being filed and the same being granted to H. B. Dunbar without a contest," now the pencil is drawn through that "without a contest." Do you remember seeing that stricken out?

A. I don't remember that, Mr. Williams; it was so long ago.

Q. Instead of two hundred there is written two hundred and fifty and the word "severally" is inserted; then in pencil is written in "a suitable maintenance until they reach the age of twenty-one years;" then the words are added in pencil: "If such be done or the divorce contested" this letter is to be returned to the undersigned and be of no effect." Now that letter was originally written in ink and these changes and erasures are made in pencil. Now do you remember having this called to your attention by Bishop Niles?

A. I do not.

Q. Do you remember a letter of that purport being read to
43 you as something which Bishop Niles had arranged with Mr. Torbet?

A. Yes, sir; I remember that letter.

Q. To that effect generally?

A. It seems so, but perhaps I can't remember all those little words written between, because it has been quite a long time.

Q. Now you understood, didn't you, that it was as I have read it; that was the arrangement substantially that was entered into at that time?

A. It seems to me so.

Q. Now it is true, isn't it, Mrs. Dunbar, that at that time, the drawing up of this letter, you understood that the drawing up of this letter was to make such arrangements as would be satisfactory to you for your support and the support of your children, so that you should not go to Cincinnati and contest the divorce proceedings?

A. I understood so; yes, sir.

COUNSEL FOR DEFENDANT: Now that is the first draft. If you would like to examine it. It will be used later as a draft submitted to Bishop Niles.

Q. I hold in my hand, Mrs. Dunbar, a power of attorney from H. B. Dunbar to L. K. Torbet of Cincinnati, Ohio, appointing him his true and lawful attorney for him, and in his name, place, and stead, to make settlement of all differences that now exist or may hereafter come up between me and my wife, Lottie E. Dunbar (*reading Exhibit* 3). Do you remember seeing that power of attorney?

A. Yes; I suppose I did.

Q. You must answer to the best of your knowledge.

A. To the best of my knowledge I think I did.

Q. Whether or not that is the exact phraseology and you think

that Mr. Torbet did show you same paper to show you his authority to act for Mr. Dunbar?

A. Yes, sir.

Q. Do you recall that when Bishop Niles displayed to you—I understand that he did display to you such a letter after the interview with Mr. Torbet?

A. Yes, sir.

Q. Do you recall whether or not there were some changes in the writing—some erasures?

A. No; I don't.

Q. And do you know whether Bishop Niles suggested to you at the time that he had insisted upon certain changes?

A. No; I don't.

Q. Now what did you understand was to be done with that letter? It was addressed to Bishop Niles?

A. Yes, sir.

Q. What did you understand was to be done with it?

A. I supposed these letters were to be returned to Mr. Torbet.

Q. Yes; and for what purpose?

A. In regard to legal proceedings in the divorce case.

Q. Did you understand that those were the terms of an agreement that Bishop Niles had succeeded in making with Mr. Torbet?

A. I understood so.

44 Q. And you understood that when that was read to you that that arrangement had already been made and was to be carried out by Mr. Torbet in behalf of Mr. Dunbar?

A. Yes, sir.

Q. Did you know that afterwards there were some—whether there were any other changes made after that?

A. By Bishop Niles, do you mean?

Q. Yes; by Bishop Niles.

A. I don't remember.

Q. How long were you in Concord at the time this letter was written?

A. We were there one afternoon, I think. I came Monday and I think either went back that night or the morning to Ashburnham.

Q. The following morning?

A. I think so; or that same night.

Q. You came in the afternoon and think you left the next morning?

A. I came some time during the day. I can't tell exactly the time.

Q. And you think you stayed over night?

A. I did not think I did. I thought I came back that night; perhaps it was the next day. I remember now, the morning.

Q. Would this make your memory certain (*reading*)? "After our lengthy conversation of last evening."

A. Yes, sir.

Q. That conversation was had in the evening with Bishop Niles, and then next morning this letter was shown to you?

A. Yes, sir.

Q. Did you stay at Bishop Niles', do you remember?

A. Yes, sir.

Q. When this letter was written to you, did you express your satisfaction or dissent?

A. I left it entirely with Bishop Niles. I thought whatever he said must be satisfactory.

Q. And you gave him authority then to do whatever he deemed to be wise under the circumstances?

A. I thought so.

Q. Do you recall that later on a new draft of that letter was sent to Bishop Niles by Mr. Torbet?

A. Well, I don't know.

Q. You don't know? Did you come into possession of a letter like that?

A. That one you have just read to me?

Q. Something like that.

A. The Bishop sent me letters.

Q. Your attorney now has the letters?

A. Yes sir.

Q. And you delivered them to him?

A. Yes, sir; the papers that Bishop Niles sent to me I delivered to him.

(*Counsel for defendant asked for the letter.*)

COUNSEL FOR PLAINTIFF: I have had no notice to produce any letters.

COUNSEL FOR DEFENDANT: No; but you have it before you, and I ask you to produce it that I may cross-examine on it.

(*It was produced.*)

45 Q. Now, whether or not you can identify that letter. Is your eyesight good enough?

A. It looks like Mr. Torbet's writing, as near as I can see.

Q. Does it look, if you can testify to it——

A. It does.

Q. —It looks like the one that was sent to you by Bishop Niles?

A. Yes.

Q. And that is, to the best of your judgment the one that you received and handed to your counsel?

A. Yes, sir.

COUNSEL FOR DEFENDANT: I would like to offer this, your honor.

(*Counsel for defendant read the letter* (*Exhibit* 8), *stating it was dated "Cincinnati, Ohio, May* 20," *or possibly "May* 28," *from Mr. Torbet to Bishop Niles, being similar to the other letter, including the alterations.*)

COUNSEL FOR DEFENDANT: This memorandum here appears to be in different writing.

Mr. TORBET: That is Bishop Niles'.

Q. Can you see enough to say whose handwriting that is, Mrs. Dunbar?

A. I should think it was Bishop Niles'.

Q. (*Reading memorandum on the back.*) "Agreement with me of attorney of H. P. Dunbar, being the consideration upon which Mrs. Dunbar's formal contract after the divorce was based, that the person to whom this is addressed do not assist in the contesting of the suit." Do you know whether that was on when you got it from Bishop Niles?

A. I should think it was.

Q. You think it was?

A. I understand so.

Q. And you read that and that was true, was it not?

A. Yes, sir.

Q. Now, did you continue to live in Ashburnham after that?

A. Yes, sir.

Q. Did you have any further consultation with Bishop Niles in regard to the matter?

A. Yes, sir; I think I did. I wrote to him and he answered me from Paris, while he was abroad.

Q. Well, did you see him again about that matter? Did you see him again that summer?

A. No, sir; I don't think I did.

Q. That is to say, after Bishop Niles had read you what he had arranged, you went home and left the matter to Bishop Niles.

A. Yes, sir.

Q. Now, shortly after that you received from Mr. Torbet a notice of the divorce proceedings?

A. From Bishop Niles; it was sent to Bishop Niles and he sent it to me, I think.

Q. Are you quite sure of that?

A. I thought so; I am not quite sure of that.

Q. Didn't it come direct from Mr. Torbet to Ashburnham?

A. I don't know.

Q. It was a newspaper advertisement?

A. Well, perhaps it was; I didn't remember.

46 Q. Well, you did receive such, that he had filed a petition for divorce?

A. For divorce?

Q. From you; in which you were the party that he proceeded against, and claiming that you had deserted him?

A. No; I didn't claim any such thing; there was no desertion.

Q. No, you don't understand my question; this notice showed you, did it not, that he had brought a suit against you for desertion and asking to be divorced from you on account of desertion?

A. Yes, sir.

Q. Let me ask you if this refreshes your recollection. See if you recall this (*showing to witness*). This was the form of the notice: "Court of common pleas, Hamilton county, Ohio. 84290. H. B. Dunbar *v.* Lottie E. Dunbar. The above-named defendant, whose last-known place of residence was Ashburnham, Mass., etc. Praying for a divorce on the grounds of wilful absence of the defendant for three years last past." June 24, 1889, the first notice. Does that sound like the notice you received?

A. I think it does.
Q. Pardon me.
A. I think so.
Q. You didn't appear or file any answer in the case, did you?
A. I left it with Bishop Niles.
Q. Well, you did not appear to contest the divorce?
A. No, sir.
Q. And you understood at that time that it was not to be contested?
A. Yes, sir.

COUNSEL FOR PLAINTIFF: What was said, I suppose.
The COURT: I should prefer what was said.

Q. You didn't intend to contest the suit?
A. I had no way of doing so, and I left it with Bishop Niles to do what he thought was right.
Q. But you understood at that time that he had agreed not to contest in your behalf?
A. Yes, sir.

The COURT: I excluded that question in another form. I don't propose to let it in in the form you have put it.
COUNSEL FOR DEFENDANT: Very well, your honor.

Q. Did you know when the divorce was granted?
A. No, sir; I did not know the date. I did not know anything about it until Mr. Torbet came to Ashburnham.
Q. Your counsel suggests that you may not understand the question. Did you know when the divorce was granted to Mr. Dunbar?
A. Oh, yes; I did.
Q. Through whom did you know it?
A. Bishop Niles, I suppose.

COUNSEL FOR DEFENDANT: Now I have here, if I may use this, Mr. Stewart, what you probably remember as the green document.
(*Exhibit* 1.)
47 The WITNESS: Yes, sir.
Q. That you have examined while your eyesight will permit you?
A. Yes, sir.
Q. You recall that document?
A. Yes, sir.
Q. And you received that agreement?
A. Yes, sir.
Q. From whom?
A. From Bishop Niles; it was sent to him and from him to me.
Q. And he told you that he had received it, did he?
A. Yes, sir.
Q. And that was a paper signed by Horace B. Dunbar, was it not?
A. Yes, sir.

Q. Do you remember when it was received?
A. I don't quite remember the date.

COUNSEL FOR DEFENDANT: I would like to read this agreement, your honor. "Know all men by these presents: (This is the agreement, I may say, that was the first of the two agreements.) That I, Horace B. Dunbar, of Cincinnati, Ohio, do by these presents bind myself to pay unto Lottie E. Dunbar of Ashburnham, Massachusetts, the sum of five hundred dollars yearly so long as she remains unmarried, same amount to be paid in monthly instalments of forty-one dollars, payable between the first and tenth days of each month, and to our children Harry and Willie, the sum of two hundred and fifty dollars each yearly until they have each attained the age of fourteen years; after that age they are to be paid by me such extra allowance as will give to them a good and sufficient education befitting their station in life and a suitable maintenance until they each attain the age of twenty-one years; such sums of money are to be paid them in equal monthly instalments between the first and tenth days of each month. Horace B. Dunbar. Witness:—Cunningham; L. K. Torbet." And the jurat (*reading*) L. K. Torbet; and impress of the seal; and on the back is written, "Contract H. B. Dunbar to Lottie E. Dunbar," and below is the stamp of Mr. Torbet and his office.

Q. You notice the date, the 4th of September, 1889. Now when you received this were you informed that the divorce had been granted?
A. Yes, sir.
Q. And Bishop Niles sent this to you by letter?
A. Yes, sir; that document as it is.
Q. It was inclosed to you in a letter, was it?
A. Yes, sir.
Q. Do you remember whether or not he wrote you at the same time? Was there a letter of explanation?
A. I do not remember, but it seems to me there was.
Q. You think there was?
A. I think so, but I am not sure.
Q. Were you informed at that time by Bishop Niles, if you recall, whether or not he had been in correspondence with Mr. Torbet about the drafting of this contract?
A. I think he had.
Q. And you received it from Bishop Niles, and after that you received from month to month payments in accordance with this?
A. Yes, sir.
Q. And received those payments up to what date? Do you recall now?
48 A. I had payments, it will be two years this coming May, two years next month, since I received them.
Q. That would be May, '98?
A. Yes, sir.
Q. Now, in May, '98, you received no payment?
A. I received payment in May.

Q. So the first payment which was defaulted was in June? That is you recollection?

A. Yes, sir.

Q. Was any explanation given you then why the payment was not made?

A. No, sir; unless you call Mrs. Dunbar's visit here, saying that there was no need of their paying anything and never had been.

Q. The new Mrs. Dunbar?

A. Yes, sir.

Q. He had married again in the meantime?

A. Yes, sir.

Q. Did you receive any word from Mr. Dunbar, saying why he had not paid?

A. No, sir.

Q. And nothing more was paid on it during that year or the next year?

A. No, sir.

Q. Recall, Mrs. Dunbar, that I am now referring to the green contract.

A. I did not understand you.

Q. Now, that green contract was dated 1889. Now, how long did you receive payments on the green contract without default?

A. It was two or three years, something like that, and then I went to Mr. Stewart.

Q. Now, how long had Mr. Dunbar been in default in these payments before you went to Mr. Stewart?

A. Some months.

Q. Can you tell how many, about?

A. Well, I think during the summer—I think I went to him in the fall.

Q. During the summer there had been no payments?

A. I think not.

Q. Did you receive any information from Mr. Dunbar or any one in his behalf at that time why the payments were not made?

A. Mrs. Dunbar came.

Q. Oh, that was when she came?

A. Yes; that was the first time I met her. I met her at Young's hotel. That was the first time I met her, I think, and she took me down to a lawyer's office on Devonshire street.

Q. Did you go to the lawyer's?

A. Yes, sir.

Q. What was his name?

A. Something that began with W. Mr. Torbet might remember who it was.

Q. Was Mr. Torbet there?

A. No, sir.

Q. How long after you saw her was it that you did not get anything on this agreement?

A. Quite a little while; some months.

Q. And then not receiving anything you went to Mr. Stewart?

A. Yes, sir.

49 Q. You took this green contract to him?
A. Yes, sir.
Q. And then took his advice as your attorney?
A. Yes, sir.
Q. Now, under his advice a second agreement (*Exhibit* 2) was drawn, was it not?
A. Yes, sir.

COUNSEL FOR DEFENDANT: And that second agreement; may I look at that? (*It was produced.*)

Q. The second agreement has been shown you already, has it not?
A. Yes, sir.
Q. It was drawn up by Mr. Stewart and then signed by you and then sent out to Ohio?
A. Yes, sir.
Q. Now at that time did you have any consultation with Mr. Dunbar?
A. No, sir.
Q. And what had occurred between you and him between the drawing or delivery to you of this green contract and the signing by you of the second contract?
A. Between Mr. Dunbar and myself?
Q. Yes.
A. Nothing; it was between Mr. Stewart and Mr. Dunbar. I had no communication with Mr. Dunbar.
Q. There had been no change so far as you know in your relations from the time of the drawing of the green contract to the time of the drawing of the second contract?
A. Not that I know of.

COUNSEL FOR DEFENDANT: We may consider that second agreement in, Mr. Stewart?
COUNSEL FOR PLAINTIFF: Yes.

Q. Now, after that, you received money again under that agreement?
A. Yes, sir.
Q. What was the first payment made under the second contract or agreement?
A. I got an increase in my monthly payments.
Q. And those payments were made for a time were they not?
A. Yes, sir.
Q. And when did they cease?
A. It will be two years next May.
Q. That is the time you have testified to before; that is, you didn't get your June payment?
A. No, sir.
Q. And since then you have received nothing?
A. No, sir.
Q. Do you recall receiving notice of the bankruptcy of Mr. Dunbar?
A. Through Mr. Stewart; yes, sir.

Q. You signed a proof of claim?
A. Yes, sir.
Q. Against his estate in bankruptcy?
A. Yes, sir.
Q. Mr. Stewart prepared that for you, I suppose?
A. Yes, sir.
Q. And you signed that at his suggestion?
A. Yes, sir.
50 Q. In this contract, Mrs. Dunbar, is this phrase: "Controversies having arisen, etc." What controversies had there been about that first agreement?
A. Between Mr. Stewart and Mr. Dunbar.
Q. What controversies had there been; did you know of any over that agreement?
A. I suppose about the stopping of the payments and the additional increase.
Q. That is all you know about?
A. Yes sir.

Redirect examination of LOTTIE E. DUNBAR:

Q. Is there anything about this paper that Mr. Williams questioned you about that you recognize as having seen before?
A. Yes, sir.

The COURT: The rough draft?
COUNSEL FOR PLAINTIFF: Yes, sir.

Q. Can you see it to read?
A. No, sir; from the writing it looks like Mr. Torbet's, but I can't read the letter. I read the signature with my glasses.
Q. Is there anything except the general tenor that seems familiar to you?
A. It seems to me the whole.
Q. With the interlineations or without them, or don't you know?
A. No, sir; it seems to me the whole of it.
Q. The words "without any contest" are erased; do you know anything about that?
A. No, sir; I think it was right.
Q. Have you any memory about the words "without any contest," as the subject of discussion?
A. Yes; I remember.
Q. And now, do you remember that the words "without any contest" were stricken out of the draft?
A. Yes, sir.
Q. You heard the letter, the final letter, that was sent, dated the 20th, read here?
A. Yes, sir.
Q. And you understood that that did not contain the words "without any contest"?
A. Yes.
Q. When you received the green agreement, as you call it, do

you remember whether there was any letter accompanying it from Mr. Torbet,—from Mr. Torbet to Bishop Niles?

A. There was a letter accompanying it from Mr. Torbet to Bishop Niles. (*The letter was shown to counsel for defendant.*)

Q. I don't suppose you can see that well enough to tell?

A. No, sir; it looks like it.

(*Counsel for plaintiff then read the letter* (*Exhibit* 9) *from Mr. Torbet to Bishop Niles, commencing "Enclosed you will find binding agreement," etc.*)

51 Q. I understood you to say to Mr. Williams that Mr. Torbet first suggested going to Bishop Niles?

A. Yes, sir.

Q. And you referred to him as a mutual friend?

A. Yes, sir.

Q. A mutual friend of whom?

A. Myself and my children.

Q. How long had he known your husband?

A. Ever since we were married; ten or twelve years.

Q. When did Mr. Stewart first come into the matter?

A. In the fall——

Q. After these payments were stopped on the first contract?

A. Yes, sir.

Q. And after that I suppose you left everything in his hands?

A. Yes, sir.

Q. You said that you went to a lawyer with Mr. Dunbar's second wife.

A. Yes, sir.

Q. Was it Mr. Brandeis?

A. Yes, sir.

Q. At whose suggestion did you go to see those lawyers?

A. Mrs. Dunbar's.

Q. Were they acting for you in any way?

A. No, sir.

Q. Now let me call your attention to that second agreement again.

The COURT: The agreement of '96?

COUNSEL FOR PLAINTIFF: Yes, your honor.

Q. This second agreement (*Exhibit* 2), the last one, I understand you to say was brought about by Mr. Stewart?

A. Yes, sir.

Q. Have you any such memory as will allow you to state whether that was executed in duplicate or only one?

A. Two, I think.

Q. Have you any such recollection that you can state whether or not, when you put your name on it, Mr. Dunbar's name was upon it?

A. Yes, sir.

Q. You think it was?

A. Yes, sir.

Q. Did you give Bishop Niles any instructions?
A. No, sir; I told him to do the best he could.
Q. You told him to do the best he could?
A. Yes, sir.
Q. Were you possessed then of any means, any property?
A. No, sir.
Q. Whether or not during all these negotiations, or during negotiations with Mr. Dunbar's brother and Bishop Niles and Mr. Torbet, you were represented by any lawyer?
A. By Mr. Stewart.
Q. I am going back to the Concord interview, and Ashburnham.
A. Oh, no; I had no lawyer.
Q. You had no lawyer?
A. No, sir.

52 Recross-examination of LOTTIE E. DUNBAR:

Q. You testified this morning with respect to that contract (Exhibit 2) that it was signed by you and then sent out to Mr. Dunbar to be signed and then sent back to you, didn't you?
A. Mr. Dunbar signed it and sent it to me to sign.
Q. You testified this morning that it was at Mr. Stewart's office that you signed it and that it was sent out to Mr. Dunbar to be signed by him. That is what you testified, wasn't it?
A. I thought it was signed by him and then I was to sign it.
Q. One moment. Let me ask you to answer that question. You testified before the recess that that contract was drawn by Mr. Stewart, and he presented it to you and you signed it, and then it was sent out to Mr. Dunbar for his signature; that is what you testified, did you not? Don't you remember?
A. Mr. Dunbar signed it and then I signed it afterwards; that is what I understood.
Q. I am asking you whether you so testified this morning. You can remember, can't you?
A. I meant to testify right.
Q. You did so testify this morning, did you not?
A. If you say I did, I suppose I did.
Q. That isn't the question. Isn't it a fact that you did so testify?
A. I suppose I did, but I meant to say the other.
Q. You did so testify, didn't you? That you haven't any doubt about. Isn't that so?
A. Yes, sir.
Q. You did. Now, during the intermission did your counsel talk with you about that?
A. No, sir.
Q. Didn't? You have changed your mind since then.
A. I have not changed my mind, because I thought I told it just as it was, as I remembered it when I had my eyesight, and could see.
Q. What made you change it?
A. I didn't think I testified so.
Q. Now, Mrs. Dunbar, didn't Mr. Stewart say something to you this noon about your testimony?

A. No, sir.
Q. Or any one,—or Mr. Teele, or Bishop Niles?
A. No, sir.
Q. Now, what caused you to change it?
A. I didn't think I did; I thought I told it as it was.
Q. What suggested to you?
A. Nothing at all.
Q. Were you right or wrong this morning?
A. I thought Mr. Dunbar signed it first and I signed it afterwards.
Q. You are not very positive, are you?
A. I think so.
53 Q. Do you recall now whether or not, on that agreement, was Mr. Dunbar's name?
A. I think it was.
Q. Written?
A. Yes, sir.
Q. And witnessed?
A. Yes, sir; and then I signed it.
Q. You signed it in Mr. Stewart's office, didn't you?
A. Yes, sir.
Q. Do you remember testifying in the court below?
A. Yes, sir.
Q. Do you remember testifying there that Mr. Stewart drew it up and you signed it and then it was sent out to Mr. Dunbar for his signature?
A. I thought Mr. Dunbar's signature was on it.
Q. No, no; do you remember testifying in the lower court before the other judge that it was drawn up by Mr. Stewart, signed by you and then sent to Mr. Dunbar for signature? Didn't you so testify there?
A. I suppose I did.
Q. Don't you remember that you did?
A. Yes; I think I must have.
Q. What has occurred since then to change your mind on that question?
A. Nothing.
Q. What has made you remember now better than you could remember then?
A. Nothing.
Q. After you had testified in the court below to that effect, did you remember that you had testified wrong?
A. No, sir.
Q. And after you testified this noon, did it occur that you had not answered right?
A. No, sir.
Q. Just come to you now?
A. It was just as I thought it was. The papers were brought to me down in the lower court, and as I could see the signature at the bottom with my glasses then, I thought that was the way it was.

(*Counsel offered in evidence a case in* 13 *Ohio St. Rep. p.* 228.)

L. K. TORBET, on behalf of the defendant, testified as follows:

Q. What is your name?
A. L. K. Torbet.
Q. What is your business?
A. Attorney-at-law.
Q. Where do you live?
A. Chicago.
Q. You now reside in Chicago?
A. Yes, sir.
Q. You are not practising now, are you?
A. No, sir.
Q. When did you discontinue the practice of law?
A. 1890.
Q. For what reason?
A. For my health.
Q. Previous to that time you had been a practising attorney in Cincinnati?
A. Yes, sir.
Q. Were counsel for Horace B. Dunbar?
A. Yes, sir.
54 Q. Knew him personally?
A. Very well.
Q. And in 1889 you represented him in matters connected with his divorce?
A. I did.
Q. You appeared in the divorce proceedings?
A. I did.

COUNSEL FOR THE DEFENDANT: Now I have relied upon you, Mr. Stewart, for that divorce record.

(*The record was produced and put in evidence.*)

Q. You came on to the East, Mr. Torbet, in behalf of Mr. Dunbar?
A. Yes, sir.
Q. Was Mrs. Dunbar, as she has testified, in Ashburnham?
A. Yes, sir.
Q. What conversation did you have with her there?
A. Coming to Boston, I met the brother of Mr. Dunbar, and from Boston we went to Ashburnham to meet Mrs. Dunbar. I made known my calling; Mr. Dunbar, Mrs. Dunbar and myself adjourned to a grove near by and the matter was taken up. It was discussed at length as between us three; I told them what I came for. At that time she asked, as I remember, by what authority, and I showed my authority.
Q. Is this Exhibit 3 the power of attorney you displayed?
A. Yes, I recognize that as the power of attorney that was given me by Horace Dunbar at that time, and after considerable discussion about the matters in which things of vital interest were taken up as between her and him, I suggested if she was not well acquainted with Bishop Niles; she said she was; I said, "Before we

go any further in this matter, I suggest that you go to Concord, N. H., and confer with Bishop Niles in this matter, and take his advice; take what advice he may give you," and she did. Mr. Dunbar returned to Boston and I went to Concord.

Q. Did you go with Mrs. Dunbar?

A. I don't remember; I am under the impression, however, that I did.

Q. Now what was the talk you had with Mrs. Dunbar at Ashburnham?

A. Well, we went over the matter. I told Mrs. Dunbar the condition as to how Mr. Dunbar felt in regard to the matter; that they had not been living together for five years, which she admitted, and that he thought it wise that suitable provision should be made for her in this matter, and that a divorce should be granted. She talked the matter over, and, of course, was very much wrought up, as I readily saw. I said to her, "Just wait a minute before you make an answer about this and study it over." After some, probably ten or fifteen minutes elapsed before she spoke, during which time we waited; she said of course she regretted this exceedingly, but no doubt that was the case, and such being the case she would consult with Bishop Niles, as I had suggested, and decide about the matter.

Q. What was said about divorce proceedings?

A. I told her that we would certainly bring an action in any event; Mr. Dunbar, his feelings was such in regard to living
55 with her that it seemed impossible for him to do so, and she said certainly it seemed to be that way as they had not been living together for five years. Of course she recalled the fact of her marriage, and the birth of her two boys, and generally went over the matter as Mr. Dunbar did with me.

Q. And when did you get to Concord?

A. I got there in the middle of the afternoon. Mrs. Dunbar had got up there, and I sent up my card and asked Bishop Niles if I could see him,—from the hotel,—and he sent word that I could, so I went up there and we had considerable conversation about the matter.

Q. Where did you see Mrs. Dunbar?

A. At Bishop Niles' home.

Q. Whether when you first called there, she was there?

A. She was there in the room for a short time, and then she left the room, and then Bishop Niles and I went over the matter in detail practically the same as I had gone over it with Mrs. Dunbar, and he told me that Mrs. Dunbar had conferred with him in the matter. I then returned to the hotel and drafted a letter which I had there marked "Number 1" (Exhibit 4). I recognize this as the first letter that I wrote to Mr. Dunbar from the Phœnix hotel in Concord, N. H. I took this letter to Mr. Niles and read it over to him——

Q. Just a moment; whether or not, before this, you had conferred with Bishop Niles upon the substance of that agreement?

A. Yes, sir.

Q. And whether you had agreed together that that would be satisfactory?

(*This was objected to.*)

Q. Or whether or not this was the incorporation of substantially what you understood to be your agreement?

A. Yes, sir; I think it is.

COUNSEL FOR THE PLAINTIFF: If this agreement was reduced to writing, these letters or writings speak for themselves.

The COURT: Certainly they do.

Q. Now, about the changes that were made?

A. The interlineations are in my handwriting made at the suggestion of Bishop Niles, and the erasures the same, as you will notice here, what we had agreed, was $400, and at his suggestion we made it $500.

Q. Now had the substance of this agreement, or the subject of this agreement been discussed with Mrs. Dunbar?

A. Yes, sir; we talked with Mrs. Dunbar about it; she was called into the room and she acquiesced.

Q. Was that when you made this agreement?

A. I am under the impression it was; I won't say absolutely.

Q. Now, you have a letter here marked "2" (Exhibit 5).

A. Yes, sir; this letter marked "2," after returning to my hotel at night, I made changes in accordance with that, and marked that "Number 2," and took it up to him in the morning, and some
56 other erasures were made at that time, and I took that back with me to Boston, and then wrote another letter.

Q. This one was prepared after your first conversation, and you went to the hotel and prepared this, and took it back in the evening?

A. Yes, sir; after the dinner hour.

Q. Then the next morning you made a new draft?

A. Yes, sir; I happened to have some paper in my hotel, and took that back at that time; and then that letter, upon the basis of that, I drew another one, so that there would not be any erasures or interlineations.

Q. Now you made a third draft (Exhibit 6)?

A. Yes, sir.

Q. What is that? (*Showing witness.*)

A. This is the original letter (Exhibit 6) that I sent to Bishop Niles from Boston on the eleventh day of May, and which he then returned; I sent it by registered letter. I recognize this letter as being the one that he returned to me in Cincinnati, and with some other writing different to what I had put in.

Q. What is that?

A. This, "and the children to remain in their mother's custody," is in his handwriting there; and upon the basis of that letter, when it was returned to me, I drafted and sent him the letter, which is now in evidence, dated May 20, which has been submitted to the court.

Q. So you made four drafts in all?
A. Yes, sir.
Q. And the final draft is the one which has been——
A. Offered in evidence; yes, sir.
Q. Now, this is dated the eleventh?
A. The eleventh and the twentieth also,—Cincinnati. I made that final change to show that was an exact copy of the letter written in Boston, that I sent from Cincinnati after he had returned it to me with the changes made then.
Q. Did you write him a letter, do you remember?
A. No more than that letter.
Q. Just enclosed that to him?
A. Just enclosed that to him, and then he replied to me at the same time. As I remember, all the letters were turned over to Mr. Horace B. Dunbar on the ninth of October.
Q. After the divorce proceedings, what did you have to do with drafting this green contract? (*Showing to witness Exhibit* 1.)
A. I drafted that contract and had it certified to by Mr. Dunbar and had it sent to Bishop Niles. There may have been some letters passed between us, but I don't remember what they were. As I say, both letters, press copies, and the letters in reply, I turned over to Mr. Dunbar.
Q. And this was the only draft signed by Mr. Dunbar?
A. Yes, sir.
Q. And forwarded to Bishop Niles?
A. Yes, sir; as I now recall.
Q. That was in September, 1889?
A. It was.
57 Q. Did you have anything more to do with the case after that?
A. Nothing more.

COUNSEL FOR THE DEFENDANT: The letter that accompanied this contract, September, is there one? (*The letter was produced.*)
COUNSEL FOR THE DEFENDANT: September 4, here is a letter (*Exhibit* 9) signed by you (*reading*) "Enclosed you will find binding agreement signed by Horace B. Dunbar, Esq.," etc.
A. Yes, sir.
Q. That letter was sent with this?
A. Yes, sir.
Q. Now that letter of May 20 (*Exhibit* 8), which letter was that?
A. That was the letter that was in evidence, number four, it would be marked "Number 4," the final letter there.

Cross-examination of L. K. TORBET:

Q. There were three letters, three drafts that you made, one after the other?
A. Yes, sir.
Q. And the whole matter was finally embodied in the letter of May 20?
A. Yes, sir.

Q. And that was the letter that was sent?
A. Yes, sir.
Q. And the only one that was used?
A. Yes, sir.
Q. They all commenced with the same language, I believe,—"After our lengthy conversation"?
A. Yes, sir; practically the same.
Q. In that first draft, on the first page, the words "without contest" are erased. Who erased those?
A. I presume I did.
Q. At the request of Bishop Niles?
A. At his suggestion.
Q. Also an erasure here,—"Then you are to advise the accepting of the within proposition, and in no event are you to assist, with advice or money, the contest for divorce as before mentioned," and the "before mentioned" is stricken out.
A. Yes, sir.
Q. Is that your erasure?
A. I presume it is.
Q. Now, draft number two, dated the 11th of May, commenced the same way?
A. Yes, sir.
Q. The sentence reads, "You are to advise the accepting of the above proposition, and in no event are to assist by advice or money the contest for divorce, if such be taken, or the divorce be contested."
A. Yes, sir; I struck that out.
Q. That erasure, "or divorce contested," was stricken out?
A. Yes, sir.
Q. By you?
A. Yes, sir; and that was at his suggestion, of course; we tried to get our minds together.
Q. It was at his suggestion that all these erasures were made and you made them?
A. Yes, sir; made them together.
58 Q. And in the third draft, the sentence is, "You are to advise accepting of the above proposition, and in no event are you to assist by advice or by money the contest for divorce."
Q. Yes, sir.
Q. And with interlineations there?
A. Yes, sir; Bishop Niles did that, it is his handwriting.
Q. You undertook or understood, did you not, between you and him, that the custody of the children was to be a matter of decree?
A. Certainly.
Q. And wasn't it understood that the arrangement for the wife's and children's support was to be a part of the decree?
A. No, sir.
Q. Did you understand that the arrangement that you made about the alimony was a reasonable and proper one for Mr. Dunbar to make at that time?

A. I did at that time for the maintenance of the children and herself, not as alimony.

Q. The amount of it you considered reasonable for a man in his circumstances at that time?

A. Yes, sir.

Q. You had a power of attorney from him?

A. I did.

Q. Did you consider that any more than a letter of introduction or a matter of endorsement to identify you?

A. That is a question perhaps—as much as anything else.

Q. A letter of introduction would have answerd your purpose just as well?

A. Well, I don't know as it would.

Q. You have examined that (*showing paper to witness*)?

A. I have not fully. Let me look at that letter number three.

Q. You notice that is dated three days before the final one?

A. Yes, sir; but he says here, "Replying to your letter of the eleventh," which is this note. I presume there is no doubt but I received a letter similar to that; I won't say it is an exact copy, but similar to that. The letter which I received was turned over to Mr. Dunbar.

COUNSEL FOR THE PLAINTIFF: I offer it as a part of the correspondence which was closed by the letter of the twentieth. (*The letter of May 17, 1889, to L. K. Torbet was read, Exhibit* 7.)

WITNESS: That was in reply to my third draft that he returned to me.

COUNSEL FOR THE PLAINTIFF: I was in error in stating that that letter of the twentieth was written in reply to that letter of the seventeenth.

COUNSEL FOR THE DEFENDANT: That letter of the twentieth was written after the receipt of that letter of the seventeenth from Bishop Niles?

WITNESS: Certainly.

Q. You were, at the time these proceedings were going on in 1889, in practice?

A. I was.

59 Q. In Cincinnati?

A. I was.

Q. And had been in practice there then how many years?

A. In Cincinnati about eight years.

Q. You undoubtedly understood the laws of Ohio very well, concerning divorce?

A. I thought I did.

Q. And when you were on here negotiating with Mrs. Dunbar first, and then with Mr. and Mrs. Dunbar and Bishop Niles, she had no counsel, had she?

A. Not that I know of; at least none that I came in contact with.

Q. You acted then as a member of the Ohio bar?

A. I was.

Q. Throughout this arrangement in Massachusetts and New Hampshire you acted in good faith?

A. I certainly did, considering the circumstances.

Q. And according to your understanding of your duty and honor as a lawyer?

A. I certainly did and so stated to Bishop Niles, as he stated in his letter there as a matter of love.

Redirect examination of L. K. TORBET:

Q. Did you receive any acknowledgment from Bishop Niles of the receipt of your letter of the twentieth?

A. I don't know, unless there may be some copies that I don't call to mind. They claim to have obtained them from counsel that succeeded me.

COUNSEL FOR THE DEFENDANT: Have you no copy of your letter written on or about May 20 in answer to that?

COUNSEL FOR THE PLAINTIFF: No.

(*Defendant rested.*)

Reply of Plaintiff.

FRANK H. STEWART, being duly sworn on behalf of the plaintiff, testified as follows:

Q. What is your name?

A. Frank H. Stewart.

Q. Mr. Stewart, you are counsel for Mrs. Dunbar?

A. Yes sir.

Q. When did you first come into the matter?

A. Some time in 1896; I do not remember just when.

Q. Whether or not she brought to you this agreement?

A. She did.

Q. The first of the two agreements since the divorce. What did you do? With whom did you engage in negotiations or correspondence?

A. I corresponded directly at first with Mr. Dunbar.

Q. Did he refer you to anybody?

A. Wilby & Wald, attorneys in Cincinnati, with whom I had correspondence; chiefly with Mr. Wald.

60 Q. How long were those negotiations going on before you got this final agreement?

A. Several months.

Q. I notice the phrase used in that agreement, "consideration of the forbearance to sue." Whether or not you had in your negotiations or in your letter to Mr. Dunbar or his attorneys proposed to bring suits for the enforcement of that agreement?

A. We had, certainly.

(*This was objected to by counsel for defendant.*) If there is any such evidence, let's have it.

COUNSEL FOR PLAINTIFF: I can put in the batch of letters, but that is the only question I intended to ask.

Q. And this second agreement (Exhibit 2) was brought about by you?

A. Brought about by me.

Q. Have you any remembrance which of them, Mr. or Mrs. Dunbar, signed that agreement first?

A. I can't remember; I have been trying to remember since the recess.

Cross-examination of FRANK H. STEWART:

Q. Have you the letter, Mr. Stewart, with which that agreement was transmitted?

A. No, sir; I have been hunting for it and can't find it.

Q. You have regular files?

A. Yes, sir; regular files.

Q. And you copy all the letters you send out?

A. Yes.

Q. Don't you think you can find that letter?

A. I did not have time during recess. I was looking up the matter of contract. I may say in regard to what Mrs. Dunbar said that I have absolutely no remembrance in the matter, and I don't know why she should.

FRANK H. STEWART, being recalled by counsel for defendant, testified as follows:—

COUNSEL FOR DEFENDANT: Have you examined your letter-press book?

A. I have.

Q. And your files of letters?

A. I have.

Q. What do you ascertain in respect to the point?

A. As to whether or not the instrument (Exhibit 2) was signed here first?

Q. Yes.

A. It was signed here first.

Q. And you have correspondence showing that?

A. Yes, sir; I have.

Q. Showing that it was signed here by your client and then sent on to Cincinnati?

A. It was first signed here.

Q. Whether or not you received the contract back in due course of mail?

A. Yes, sir.

Q. With Mr. Dunbar's signature?

A. Yes, sir.

61 Counsel for plaintiff offered and put in evidence the following:—

19 Ohio State, 502, Cox *v.* Cox.
44 Ohio State, 449.
52 Ohio State, 229.
45 Ohio State, 452.

Wright (Ohio), 514.
11 Law Bulletin (Ohio), 191.
15 Wallace, 549.
Ohio Statutes, Benedict, vol. 1, sect. 3112, sect. 5703.
Wright (Ohio), 643.
Wright (Ohio), 243.
Wright (Ohio), 632.

Counsel for defendant offered and put in evidence the following cases:—

Judy *v.* Louderman, 48 Ohio State, 562.
Stoutenberg *v.* Lyband, 13 Ohio State, 228.
Sayles *v.* Sayles, 1 Foster (21 N. H.), 312.

No question of pleading or of the validity of the decree of divorce was raised.

EXHIBIT 1.

Know all men by these presents: That I, Horace B. Dunbar, of Cincinnati, Ohio, do by these presents bind myself to pay unto Lottie E. Dunbar, of Ashburnham, Mass., the sum of "five hundred dollars" yearly, so long as she remains unmarried, the said amount to be paid in monthly installments of "forty-one and 66–100 dollars" payable between the first and tenth days of each and every month. And to our children Harry H. Dunbar and Willie W. Dunbar the sum of "two hundred and fifty dollars" each, yearly, until they each attain the age of fourteen years, after that age they are to be paid by me such extra allowance as will give to them a good and sufficient education befitting their station in life and a suitable maintenance until each attain the age of twenty-one years. Such sums of money are to be paid them in equal monthly installments between the first and tenth days of each and every month.

(Signed) HORACE B. DUNBAR.

Witness-:
(Signed) W. C. CUNNINGHAM.
L. K. TORBET.

62 STATE OF OHIO, *Hamilton County,* } *ss:*

Be it remembered that on the fourth day of September, A. D. 1889, before me personally came Horace B. Dunbar, of Cincinnati, Ohio, the constituent in the foregoing contract, and acknowledged the signing thereof to be his voluntary act, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal on the day and year last above mentioned.

[Notarial Seal, Hamilton County, O.]

(Signed) L. K. TORBET,
Notary Public, Hamilton Co., O.

EXHIBIT 2.

Controversies having arisen concerning the agreement heretofore made between Horace B. Dunbar and Lottie E. Dunbar in September 1889: In consideration of said Lottie E. Dunbar's *of* forbearing suit on such controversies, and in settlement of all such controversies, and in substitution of said agreement of September 1889, and in further consideration of the release by Lottie E. Dunbar, and in satisfaction of all claims under said original agreement, Horace B. Dunbar agrees with the said Lottie E. Dunbar as follows:

That Horace B. Dunbar will pay to Lottie E. Dunbar during her life, or until she marries, for her maintenance and support, yearly, the sum of five hundred dollars, and will pay to her yearly for the support and maintenance of her child Harry H. Dunbar the sum of four hundred dollars until he shall attain the age of twenty-one years; and shall pay to her yearly for the support and maintenance of her child Willie W. Dunbar the sum of four hundred dollars until he shall attain the age of twenty-one years, all said sums to be paid in equal monthly installments between the first and tenth of each and every month—the first installment being for the month of May 1896, shall be paid between the first and tenth of June 1896.

And in addition to the foregoing said Horace B. Dunbar agrees to pay the further sum of one hundred dollars between the first and tenth day of July 1896, over and above the installment otherwise due for said month.

And the said Lottie E. Dunbar hereby agrees that she has not, nor shall she have any other claim or demand against Horace B. Dunbar for contribution to her support and maintenance or
63 for the support, maintenance or education of said children save and except as fixed and limited by this agreement.

(Signed) HORACE B. DUNBAR. [SEAL.]
LOTTIE E. DUNBAR. [SEAL.]

Witness-:
(Signed) GUSTAVUS H. WALD.
FRANK H. STEWART,
To L. E. D.

EXHIBIT 3.

Know all men by these presents: That I, H. B. Dunbar of Cincinnati, Ohio, have made, constituted, and appointed, and by these presents do make, constitute and appoint L. K. Torbet of Cincinnati, Ohio, true and lawful attorney, for me and in my name, place and stead, to make settlement of all differences that now exists or may hereafter come up between my wife Lottie E. Dunbar of Ashburnham, Worcester Co., Massachusetts, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do, if personally present, with full power of substitution and revocation; hereby ratifying and confirming all that my

said attorney shall lawfully do, or cause to be done, by virtue hereof.

In witness whereof, I have hereunto set my hand this seventh day of May, in the year one thousand eight hundred and eighty-nine.

(Signed) H. B. DUNBAR.

Signed and acknowledged in presence of us—
W. H. DICKS.
J. P. P. BROWN.

STATE OF OHIO, } ss:
County of Hamilton, }

Be it remembered, that on this seventh day of May A. D. eighteen hundred and eighty-nine, before me, a notary public in and for said county, personally came H. B. Dunbar of Cincinnati, Ohio, the constituent in the foregoing letter of attorney, and acknowledged the signing thereof to be his voluntary act, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal, on the day and year last above mentioned.

[Notarial Seal, Hamilton County, O.].

WILLIAM H. DICKS,
Notary Public, Hamilton Co., O.

64 EXHIBIT 4. 1st.

Phœnix hotel, Edson J. Hill, manager.

CONCORD, N. H., 5/11, 1889.

Bishop W. W. Niles, Concord, N. H.

REVEREND SIR: After our lengthy conversation last evening relative to the affairs of Mr. and Mrs. H. B. Dunbar, I beg leave to make the following proposition on part of H. B. Dunbar, Esq., of Cincinnati, O. In the event of an action for divorce being filed and the same granted to said H. B. Dunbar—he is to pay Mrs. Lottie E. (pencil) five
Dunbar the sum of "four hundred dollars"—yearly—so long as she remains unmarried, and to the children Harry H. and Willie W. (pencil) $250.00 (pencil) severally
"two hundred dollars each—yearly until they A arrive at the age of (pencil) they
14 years. After the age of 14 years to receive such extra allowance, yearly, as will give them a good and sufficient education befitting (pencil) and a suitable maintenance until they reach the age of 21 years
their station in life A. You are to advise the accepting of the within proposition and in no event are you to assist by advice or (pencil) or the divorce contested
with money the contest for divorce. If such be done A this letter is to be returned to the undersigned (pencil) and be of no effect.

Very truly yours,

(Signed) L. K. TORBET,
Att'y for H. B. Dunbar.

L. K. Torbet, att'y, 78 & 79 Johnston bldg., Cincinnati, O.

(Exact copy.) (2.)

EXHIBIT 5.

J. W. Johnson. George G. Mann.

The Quincy, American and European plan. J. W. Johnson & Co., Boston.

BOSTON, 5/11, 1889.

Rt. Rev. W. W. Niles, Concord, N. H.

REVEREND SIR: After our lengthy conversation last evening relative to the affairs of Mr. and Mrs. H. B. Dunbar, I beg leave to make the following proposition on part of H. B. Dunbar, Esq., of Cincinnati, O. In the event of an action for divorce being filed and the same granted to said H. B. Dunbar—he is to pay Mrs. Lottie E. Dunbar the sum of five hundred dollars "yearly, so long as she remains unmarried, and to the children Harry H. and Willie
65 W. two hundred and fifty dollars" each, yearly, until they severally arrive at the age of 14 years. After that age they to receive such extra allowance yearly, as will give them a good and sufficient education befitting their station in life, and a suitable maintenance until they reach the age of 21 years. You are to advise the accepting of the above proposition, and in no event are you to assist by advice or with money the contest for divorce. If such be done then this letter is to be returned to the undersigned and be of no effect.

Respectfully yours, L. K. TORBET,
Att'y for H. B. Dunbar.

Office, 78 & 79 Johnson building, Cincinnati, O.

(Copy.)

EXHIBIT 6. (3.)

J. W. Johnson. George G. Mann.

The Quincy, American and European plans. J. W. Johnson & Co., Boston.

BOSTON, 5/11, 1889.
CINCINNATI, O., *May 20th.*

Rt. Rev. W. W. Niles, Concord, N. H.

REVEREND SIR: After our lengthy conversation on the 10th relative to the affairs of Mr. and Mrs. H. B. Dunbar, I beg leave to make the following proposition on the part of H. B. Dunbar, Esq., of this city. In the event of an action for divorce being filed and the same granted to H. B. Dunbar—he is to pay Mrs. Lottie E. Dunbar the sum of "five hundred dollars" yearly—so long as she remains unmarried and to the children Harry H. and Willie W. "two hundred and fifty dollars" each, yearly until they severally arrive at the age of 14 years. After that age they to receive such extra allowance yearly, as will give them a good and sufficient education befitting their station in life and a suitable maintenance until

they reach the age of 21 years—and the children are to remain in their mother's custody. You are to advise the accepting of the above proposition and in no event are you to assist by advice or with money the contest for divorce. If such be done then this letter is to be returned to the undersigned and be of no effect.

Very respectfully,

(Signed) L. K. TORBET,
Att'y for H. B. Dunbar.

Office, 78 & 79 Johnston bldg., Cincinnati, O.

66 No. 1. EXHIBIT 7.

CONCORD, N. H., *May 17th*, 1889.

L. K. Torbet, Esq., att'y for H. B. Dunbar.

DEAR SIR: Absence and continually pressing engagements have hindered me in replying to your note of the 11th inst. The terms and the points written in your letter are as I understood them in the main, and in all things vital to Mrs. Dunbar, but the wording of the paragraph at the end (by which I have drawn a line) is not quite what I intended. I did not mean to bind myself to *do* anything whatsoever of a positive nature, but only to declare in consideration of the things here guaranteed for her and her children, that is my purpose not to *do* anything; and to have your agreement with me void if either I *oppose* with advice or money, or if *she* opposes with or without my advice.

I shall have her make no compact with me, but she knows how the matter looks to me—that she could with much pain and money probably defeat the divorce; *but that she cannot fight love* into *existence* and that she is under no obligation to try, and I think it looks the same to her. Were aught alleged or intimated against her character or behavior, the case would be different, and contest I would urge her and help her to make.

I would like your document then to be rewritten so that the closing paragraph shall read as follows: "You for your part, it is understood, will not assist by advice or with money the contest for divorce. If such assistance be given or if a contest be made, this agreement is to be void and of no effect, and this letter to be returned to me."

This I believe will cover all that you want, and will exactly suit me. Moreover, it releases you in case she were, without *my advice or help*, to make a contest, while your sentence does not so plainly do this. If you please then, once more write the letter so amended, and forward it to me.

Very truly yours,

(Signed) W. W. NILES.

P. S.—I wrote in a sentence touching the custody of the children. It is implied in what you wrote, but not exactly stated. On reflection I do not see any good in my writing a strong personal letter to Mr. Dunbar.

EXHIBIT 8.

CINCINNATI, O., *May 20th*, '89.

Rt. Rev. W. W. Niles, Concord, N. H.

REVEREND SIR: After our lengthy conversation on the 10th relative to the affairs of Mr. and Mrs. H. B. Dunbar, I beg leave to make the following proposition on part of H. B. Dunbar, Esq., of
67 this city. In the event of an action for divorce being filed and the same granted, to H. B. Dunbar. He is to pay Mrs. Lottie E. Dunbar the sum of "five hundred dollars" yearly, so long as she remains unmarried and to the children Harry H. and Willie W. "two hundred and fifty dollars" each yearly until they severally arrive at the age of fourteen years: after that age they to receive such extra allowance yearly as will give them a good and sufficient education befitting their station in life and a suitable maintenance until they reach the age or twenty-one years and the children are to remain in the custody of their mother. You for your part, it is understood, will not assist by advice or with money the contest for divorce, if such assistance be given or if a contest be made, this agreement to be void and of no effect and this letter is to be returned to the undersigned.

Very respectfully,

(Signed) L. K. TORBET,
Att'y for H. B. Dunbar.

(*Memo. on Back.*)

Agreement with me of Attorney of H. B. Dunbar.

Being the "consideration" upon which Mr. Dunbar's formal contract *after* the divorce was based (that the person to whom that is addressed do not "assist" in the contesting of the suit.)

EXHIBIT 9.

CINCINNATI, 9/4, '89.

Rt. Rev. W. W. Niles, Concord, N. H.

MY DEAR SIR: Enclosed you will find properly executed binding agreement on part of H. B. Dunbar Esq. The same was drawn in confirmance to letter to you dated May 20/89. I am thankful to you for your interest and advice in this matter. Trust that we may meet again. With best wishes,

I am yours respt.,

(Signed) L. K. TORBET.

The defendant asked me to rule "that upon all the evidence the plaintiff is not entitled to recover." I refused so to rule.

The plaintiff asked me to rule "that the discharge in bankruptcy pleaded by the defendant was not a bar to any part of her claim." I declined so to rule as to so much of the plaintiff's declaration as

seeks to recover the sum of $333.33, "allowance due her for
68 support and maintenance of Willie W. Dunbar," and found and ordered judgment for the plaintiff in the sum of $429.04.

And now at the request of the parties the case is reported to the supreme judicial court. And by agreement of parties if both rulings were right, judgment is to be affirmed; otherwise such judgment to be entered as law and justice may require.

HENRY K. BRALEY,
Justice Superior Court.

October 24, 1900.

Copy,
Attest: JOS. A. WILLARD, *Clerk.*

Municipal Court of the City of Boston.

DUNBAR
v.
DUNBAR.

Amendment to Plaintiff's Declaration.

And now comes the plaintiff in the above-entitled action and moves to amend her declaration by inserting after the seventh line in the copy annexed, marked "A," the following: "Horace B. Dunbar agrees with the said Lottie E. Dunbar as follows;" so that said copy annexed, marked "A," shall read as follows:—

"Controversies having arisen concerning the agreement heretofore made between Horace B. Dunbar and Lottie E. Dunbar in September, 1889, in consideration of said Lottie E. Dunbar's forbearance of suit on such controversies, and in settlement of all such controversies and in substitution of said agreement of September, 1889, and in further consideration of the release by Lottie E. Dunbar, and in satisfaction of all claims under said original agreement, Horace B. Dunbar agrees with the said Lottie E. Dunbar as follows:—

That Horace B. Dunbar will pay to Lottie E. Dunbar during her life, or until she marries, for her maintenance and support, yearly, the sum of five hundred dollars, and will pay to her yearly, for the support and maintenance of her child Harry H. Dunbar, the sum of four hundred dollars until he shall attain the age of twenty-one years; and shall pay to her yearly, for the support and maintenance of her child Willie W. Dunbar, the sum of four hundred dollars until he shall attain the age of twenty-one years; all said sums to be paid in equal monthly instalments between the first and tenth of each and every month—the first instalment being for the month of May, 1896, shall be paid between the first and tenth of June, 1896.

And in addition to the foregoing said Horace B. Dunbar agrees to pay the further sum of one hundred dollars between the first and tenth of July, 1896, over and above the instalment otherwise due for said month.

And the said Lottie E. Dunbar hereby agrees that she has
69 not nor shall she have any other claim or demand against Horace B. Dunbar for contribution to her support and main-

tenance, or for the support, maintenance or education of said children, save and except as fixed and limited by this agreement."

HORACE B. DUNBAR. [SEAL.]
LOTTIE E. DUNBAR, [SEAL.]
By her attorney, FRANK H. STEWART.

Witness-:
GUSTAVUS H. WALD.
FRANK H. STEWART,
To L. E. D.

Defendant's Answer.

Now comes the defendant in the above-entitled cause, and for answer denies each and every allegation in the plaintiff's writ and declaration contained.

And further answering says that the defendant became a bankrupt on his voluntary petition, and that the plaintiff was named as a creditor in the defendant's petition in bankruptcy; that due notices were mailed to her as such creditor; that the plaintiff appeared by attorney at the first creditors' meeting of the defendant in bankruptcy and voted for a trustee in bankruptcy, and the defendant says that on the 24th day of April, A. D. 1899, he was granted a discharge in bankruptcy, a copy whereof is hereto annexed and marked "A," and said discharge is a full and complete bar to the plaintiff's claim.

By his attorney, GEO. FRED WILLIAMS.

"A."

United States District Court in Bankruptcy, Southern District of Ohio, Western Division.

In re HORACE B. DUNBAR, Bankrupt. No. 2521.

This is to certify, that on December 2, 1898, Horace B. Dunbar filed his petition in bankruptcy in this court, alleging among other things that he then was, and for more than six months had been, a resident and citizen of Cincinnati, in this district, and that he owed debts which he was unable to pay, and prayed to be adjudged a bankrupt. Said petition was accompanied by duly verified
70 schedules. The schedule of creditors contained, among others, the following: "Lottie E. Dunbar, residence Charlestown, Mass., amount, $540.00, for alimony due to said date, and $1300.00, also for alimony, payable yearly; no security."

And thereupon said Horace B. Dunbar was by this court adjudicated a bankrupt, and the cause was referred to Morrison R. Waite, as referee.

And thereupon notice was duly published and also mailed to each creditor, including said Lottie E. Dunbar, to their respective addresses, of the filing of said petition, and of the first meeting of creditors to be held on February 7, 1899.

And on February 7, 1899, said first meeting of creditors was held

before the said referee, who thereafter returned, among other things, that Lottie E. Dunbar had appeared by attorney, who produced and filed his power of attorney duly executed, and had filed her claim for $691.63, for instalments of alimony due to December, 1898.

And afterwards, on February 17, 1899, said Horace B. Dunbar duly filed his petition in discharge.

And thereupon the court ordered that the hearing of said petition for discharge be set for April 24, 1899, and that the same be advertised in the Court Index, which was done, and that the clerk mail notices of said hearing to each creditor, and thereupon the clerk mailed said notices to each creditor, including said Lottie E. Dunbar, in conformity with the statute and the orders of the court.

And on April 24, 1899, said petition for discharge came on for hearing, and the court, on consideration thereof, made an order as follows:

Whereas, Horace B. Dunbar, of Cincinnati, Ohio, in said district, has been duly adjudged a bankrupt under the acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said Horace B. Dunbar be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the 2d day of December, A. D. 1898, on which day the petition for adjudication was filed by him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

And on the same day a certificate of discharge was issued to said Horace B. Dunbar.

Attest: R. R. COWEN, *Clerk*,
By R. C. GEORGE, *Deputy*.

Cincinnati, Ohio, October 16, 1899.

71 *Motion to Amend.*

And now the defendant comes and moves to amend his answer by filing an attested copy of proceedings and discharge in bankruptcy in the place of a copy of the attested copy which has been filed with the answer.

By his attorney, GEORGE FRED WILLIAMS.

Defendant's Motion to Amend Answer.

Now comes the defendant in the above action and moves to amend his answer by adding thereto the following: "and defendant further answering says that the alleged contract set forth in plaintiff's declaration was without consideration, and also that the said contract was entered into upon an unlawful consideration and upon an agreement that the plaintiff should permit defendant's libel for divorce to be granted without contest, and said argument was contrary to the policy of the law and void."

By his attorney, GEORGE FRED WILLIAMS.

72 [Endorsed:] No. 1752 Lottie E. Dunbar *v.* Horace B. Dunbar. Report. Suffolk county.

73 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Superior Court.

LOTTIE E. DUNBAR
vs.
HORACE B. DUNBAR.

Defendant's Motion for Extension of Time in which to File Exceptions.

Now comes the defendant in the above-entitled cause, and moves that the time for filing his exceptions in said cause be further extended to August 31st, A. D. 1900.

By his attorneys, GEO. FRED WILLIAMS &
JAMES A. HALLORAN.

Copy,
Attest: JOS. A. WILLARD, *Clerk.*

74 [Endorsed:] 4632 4. Commonwealth of Mass., Suffolk, *ss.* Superior court Lottie E. Dunbar *vs.* Horace B. Dunbar Def't's motion to extend time for filing exceptions July 16, 1900 Allowed Henry K. Braley J. S. C. Copy. From the office of Geo. Fred Williams & James A. Halloran 209 Wash'n St., Boston, Mass. July 16, 1900.

75 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Superior Court.

LOTTIE E. DUNBAR
vs.
HORACE B. DUNBAR. } # 11545.

Defendant's Motion for Extension of Time in which to File Exceptions.

Now comes the defendant in the above-entitled cause and moves that the time for filing his exceptions in said cause be extended to July 31st, A. D. 1900.

By his attorneys, GEO. FRED WILLIAMS,
JAMES A. HALLORAN.

Copy,
Attest: JOS. A. WILLARD, *Clerk.*

76 [Endorsed:] 4632 3 Commonwealth of Massachusetts, Suffolk, *ss.* Superior court. Lottie E. Dunbar *vs.* Horace B. Dunbar Copy. Defendant's motion for extension of time to file exceptions E. Suffolk clerk's office Filed 1900 14, Jun-. Jos. A. Willard, cl'k superior court I assent to the allowance of within

motion J. O. Teele, att'y for pl'ff. June 14, 1900 Allowed H. K. B., J. S. C. From the office of Geo. Fred Williams 209 Washington St., Boston. Room 50.

77 SUFFOLK, *ss:*

Superior Court, April Sitting, 1900.

LOTTIE E. DUNBAR, Pl'ff,
—
HORACE B. DUNBAR, D'f't.

In the above action the court finds for the plaintiff and assess damages in the sum of four hundred twenty-nine 04/100 dollars.

HENRY K. BRALLY,
Justice Superior Court.

Memorandum.

The defendant asked me to rule that upon all the evidence the plaintiff was not entitled to recover. I refused so to rule and saved the exception of the defendant.

The plaintiff asked me to rule that the discharge in bankruptcy pleaded by the defendant was not a bar to any part of her claim. I declined so to rule as to so much of the plaintiff's declaration as seeks to recover the sum of $333.33 "allowance due her for support and maintenance of Willie W. Dunbar" and saved her exception to the refusal to rule.

June 7, 1900.

H. K. B., *J. S. C.*

Copy.
Attest: JOS. A. WILLARD, *Clerk.*

78 [Endorsed:] 4632 Dunbar *vs.* Dunbar Court finds for pl'ff. Damages $429.04 April sitting 1900. viz: June 12, 1900 Copy.

79 No. 4632. J. W. May.

SUFFOLK, *ss:*

Superior Court, —— Sitting 1900.

DUNBAR, Pl'ff,
v.
DUNBAR, D'f't.

In the above action I appear for pl'ff.

J. O. TEELE.

E Suffolk clerk's office Filed Apr. 4, 1900.

JOS. A. WILLARD,
Cl'k Superior Court.

Copy,
Attest: JOS. A. WILLARD, *Clerk.*

80 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

Superior Court.

LOTTIE E. DUNBAR } *vs.* HORACE B. DUNBAR. } No. 11545.

Defendant's Motion to Amend Answer.

Now comes the defendant in the above action and moves to amend his answer by adding thereto the following:

"And defendant further answering says that the alleged contract set forth in plaintiff's declaration was without consideration, and also that the said contract was entered into upon an unlawful consideration & upon an agreement that the plaintiff should permit defendant's libel for divorce to be granted without contest, and said agreement was contrary to the policy of the law & void."

By his attorney, GEO. FRED WILLIAMS.

Copy,
Attest: JOS. A. WILLARD, *Clerk*.

81 [Endorsed:] 4632 Lottie E. Dunbar *v.* Horace B. Dunbar Copy. Defendant's motion to amend answer. This may be filed. F. H. Stewart pl'ff's attorney. E Suffolk clerk's office Filed Apr. 10. 1900 Jos. A. Willard cl'k superior court.

82 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

At the municipal court of the city of Boston, holden at said Boston, within the county of Suffolk, for civil business, on the twenty-second day of December, in the year of our Lord one thousand and eight hundred and ninety-nine.

LOTTIE E. DUNBAR, Plaintiff, } *vs.* HORACE B. DUNBAR, Defendant. }

Contract.

I hereby certify that the above-entitled action was duly entered in said court, on the fourteenth day of October, A. D. 1899.

Oct. 18, 1899.—Def't files ans. and plea of discharge in bankruptcy.

Oct. 18, 1899.—Def't's mo. to amend ans. filed & all'd.

Nov. 2 & 3, 1899.—Trial.

Nov. 3, 1899.—Pl'ff's mo. to amend filed & all'd.

Dec. 16, 1899.—Court finds for def't.

Def't's costs $9.13.

From which said judgment the said plaintiff appealed to the superior court, and within the time prescribed by law, to wit: December 23. 1899 at 9.45 a. m. filed a bond with surety, to prosecute said appeal at said superior court, to be holden at said Boston, within

and for the county of Suffolk, for the transaction of civil business, on the first Monday of January 1900.

ORSINO G. SLEEPER, *Clerk.*

Copy.
Attest:

JOS. A. WILLARD,
Clerk of Superior Court.

83 [Endorsed:] No. 4632. Lottie E. Dunbar, pl'ff. vs. Horace B. Dunbar, d'f't. Certificate of proceedings. Appealed. Copy. For pl'f. Frank H. Stewart. For d'f't. Geo. Fred Williams James A. Halloran.

84 Know all men by these presents, that we, Lottie E. Dunbar of Ashburnham in the county of Worcester and Commonwealth of Massachusetts, as principal, and Harry H. Dunbar as surety, are holden and stand firmly bound and obliged unto Horace B. Dunbar in the full and just sum of one hundred dollars, to be paid unto the said Horace B. Dunbar and his executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated at Boston, the twenty-third day of December in the year of our Lord one thousand eight hundred and ninety-nine.

The condition of this obligation is such, that whereas the said Horace B. Dunbar by the consideration of the justices of the municipal court of the city of Boston, holden at said Boston, within the county of Suffolk, for civil business, on the twenty-second day of December in the year of our Lord one thousand eight hundred and ninety-nine recovered judgment against the said Lottie E. Dunbar for the costs of suit taxed at nine dollars and thirteen cents, in a personal action brought by said Lottie E. Dunbar against said Horace B. Dunbar in which the said Lottie E. Dunbar set her damages at one thousand dollars.

From which judgment the said Lottie E. Dunbar appealed to the superior court to be holden at said Boston, within and for the county of Suffolk, for the transaction of civil business, on the first Monday of January, A. D. 1900.

Now if the said Lottie E. Dunbar shall enter and prosecute her said appeal at said superior court with effect, and satisfy any judgment which may be entered against her in said superior court upon said appeal for costs within thirty days of the entry of such judgment; then this obligation to be void, otherwise to abide in full force, power and virtue.

LOTTIE E. DUNBAR. [SEAL.]
HARRY H. DUNBAR. [SEAL.]

Signed and sealed in presence of
MOSES P. GREENWOOD, to L. E. D.
A. P. TEELE, to H. H. D.

Copy.
Attest:

JOS. A. WILLARD, *Clerk.*

85 [Endorsed:] Municipal court of the city of Boston, for civil business. No. 4632 1899. Lottie E. Dunbar *vs.* Horace B. Dunbar. Bond to pros. appeal. Surety approved Dec. 23, 1899. Bond filed at 9.45 a. m. Walter F. Frederick, ass't clerk. Copy. The within-named surety is acceptable to the def't Geo. Fred Williams & James A. Halloran, att'ys for defendant.

86 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Municipal Court of the City of Boston for Civil Business.

DUNBAR *vs.* DUNBAR. } No. 10829.

Motion to Amend.

And now the defendant comes and moves to amend his answer by filing an attested copy of proceedings & discharge in bankruptcy in the place of a copy of the attested copy which has been filed with the answer.

By his attorney, GEO. FRED WILLIAMS.

Copy,
Attest: JOS. A. WILLARD, *Clerk.*

87 [Endorsed:] 4632 Municipal court of the city of Boston for civil business. 1899 Dunbar *vs.* Dunbar. Copy Motion to amend answer. Geo. Fred Williams att'y for defendant. Municipal court Filed & all'd. Oct. 18, 1899 H. S. D.

88 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Municipal Court of the City of Boston.

LOTTIE E. DUNBAR *vs.* HORACE B. DUNBAR. }

Contract.

Defendant's Answer.

Now comes the defendant in the above-entitled cause, and for answer denies each and every allegation in the plaintiff's writ and declaration contained.

And further answering says that the defendant became a bankrupt on his voluntary petition, and that the plaintiff was named as a creditor in the defendant's petition in bankruptcy; that due notices were mailed to her as such creditor; that the plaintiff appeared by attorney at the first creditors' meeting of the defendant

in bankruptcy and voted for a trustee in bankruptcy, and the defendant says that on the 24th day of April A. D. 1899 he was granted a discharge in bankruptcy, a copy whereof is hereto annexed and marked "A," and said discharge is a full and complete bar to the plaintiff's claim.

By his attorney, GEO. FRED WILLIAMS.

89 "A."

United States District Court in Bankruptcy, Southern District of Ohio, Western Division.

In re HORACE B. DUNBAR. Bankrupt. No. 2521.

This is to certify that on December 2nd, 1898 Horace B. Dunbar filed his petition in bankruptcy in this court alleging among other things that he then was, and for more than six months had been, a resident and citizen of Cincinnati in this district, and that he owed debts which he was unable to pay, and prayed to be adjudged a bankrupt. Said petition was accompanied by duly verified schedules. The schedule of creditors contained among others the following: Lottie E. Dunbar, residence Charlestown, Mass., amount $540.00 for alimony due to said date, and $1300.00, also for alimony, payable yearly; no security.

And thereupon said Horace B. Dunbar was by this court adjudicated a bankrupt and the cause was referred to Morrison R. Waite as referee.

And thereupon notice was duly published and also mailed to each creditor, including said Lottie E. Dunbar, to their respective addresses, of the filing of said petition and of the first meeting of creditors to be held on Feb. 7th, 1899.

And on Feb. 7th, 1899 said first meeting of creditors was held before the said referee, who thereafter returned among other things that Lottie E. Dunbar had appeared by attorney, who produced and filed his power of attorney duly executed, and had filed her claim for $691.63 for instalments of alimony due to Dec. 1898.

90 And afterwards on Feb. 17th, 1899 said Horace B. Dunbar duly filed his petition in discharge.

And thereupon the court ordered that the hearing of said petition for discharge be set for April 24th, 1899, and that the same be advertised in the Court Index, which was done, and that the clerk mail notices of said hearing to each creditor, and thereupon the clerk mailed said notices to each creditor including said Lottie E. Dunbar in conformity with the statute and the orders of the court.

And on April 24th, 1899 said petition for discharge came on for hearing and the court on consideration thereof made an order as follows:

Whereas, Horace B. Dunbar, of Cincinnati, Ohio, in said district, has been duly adjudged a bankrupt under the acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court, that said Horace B. Dunbar be discharged from all debts and

claims which are made provable by said acts against his estate and which existed on the 2nd day of December, A. D. 1898, on which day the petition for adjudication was filed by him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

And on the same day a certificate of discharge was issued to said Horace B. Dunbar.

Attest: R. R. COWEN, *Clerk*,
[SEAL.] By R. C. GEORGE, *Deputy*.

Cincinnati, O. October 16, 1899.

Copy,
Attest: JOS. A. WILLARD, *Clerk*.

91 [Endorsed:] 4632. Com. of Mass. Suffolk, *ss*. Municipal court of the city of Boston, of 1899. Lottie E. Dunbar *vs*. Horace B. Dunbar. Contract. Copy. Defendant's answer. Municipal court. Filed Oct. 18, 1899, for civil business Office of Geo. Fred Williams 209 Washington St. Boston, Mass.

92 Municipal Court of the City of Boston.

DUNBAR
vs.
DUNBAR.

Amendment to Plaintiff's Declaration.

And now comes the plaintiff in the above-entitled action and moves to amend her declaration by inserting after the seventh line in the copy annexed marked "A," the following:—"Horace B. Dunbar agrees with the said Lottie E. Dunbar as follows;" so that said copy annexed marked "A" shall read as follows:—

"Controversies having arisen concerning the agreement heretofore made between Horace B. Dunbar and Lottie E. Dunbar in September 1889: In consideration of said Lottie E. Dunbar's forbearance of suit on such controversies, and in settlement of all such controversies and in substitution of said agreement of September 1889 and in further consideration of the release by Lottie E. Dunbar and in satisfaction of all claims under said original agreement, Horace B. Dunbar agrees with the said Lottie E. Dunbar as follows:

That Horace B. Dunbar will pay to Lottie E. Dunbar during her life, or until she marries, for her maintenance and support, yearly, the sum of five hundred dollars, and will pay to her yearly for the support and maintenance of her child Harry H. Dunbar the sum of four hundred dollars until he shall attain the age of twenty-
93 one years; and shall pay to her yearly for the support and maintenance of her child Willie W. Dunbar the sum of four hundred dollars until he shall attain the age of twenty-one years, all said sums to be paid in equal monthly installments between the first

and tenth of each and every month—the first installment being for the month of May, 1896, shall be paid between the first and tenth day of June, 1896.

And in addition to the foregoing said Horace B. Dunbar agrees to pay the further sum of one hundred dollars between the first and tenth of July 1896, over and above the installment otherwise due for said month.

And the said Lottie E. Dunbar hereby agrees that she had not nor shall she have any other claim or demand against Horace B. Dunbar for contribution to her support and maintenance or for the support maintenance or education of said children save and except as fixed and limited by this agreement."

(Signed) HORACE B. DUNBAR. [SEAL.]
LOTTIE E. DUNBAR, [SEAL.]
By her attorney, FRANK H. STEWART.

Witness-:
(Signed) GUSTAVUS H. WALD.
FRANK H. STEWART,
To L. E. D.

Copy.
Attest: JOS. A. WILLARD, *Clerk.*

94 [Endorsed:] 4632. Dunbar *v.* Dunbar Motion to amend declaration. Filed Nov. 3, 1899. Copy.

95 *Mesne Process.—Certificate of Recognizance.*

COMMONWEALTH OF MASSACHUSETTS, } ss:
County of Suffolk, }

OCTOBER 2ND, 1899.

I certify that Horace B. Dunbar, the defendant named in the annexed writ having been arrested, and now held in custody by Albert C. Tilden, deputy sheriff, by virtue of said writ, is before me to recognize with surety for his appearance for examination before some court having jurisdiction to examine him as provided in chapter 419, Acts of the Year 1888, and under the provisions of chapter 162 of the Public Statutes, and amendments thereto, and said defendant did then and there recognize in due form, with Wm. H. Lapointe of Boston county of Suffolk in the sum of $1000 that some day before the fourteenth day of October 1899, that being the return day of said writ, said defendant will appear before said court for said examination, first giving notice to the plaintiff, as required by law, of his intention so to do.

EDWARD J. JONES,
Master in Chancery.

(10 10 I. R. stamp Oct. 4, '99.)
(Endorsed.)

96 Edward J. Jones, master in chancery, 61 Court street, Boston.

Affidavit of arrest, mesne process, P. S., chap. 162, sec. 1.

Contract.

Mesne process.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

BOSTON, *Oct. 2nd, A. D.* 1899.

I, Harry H. Dunbar in behalf of the plaintiff named in the annexed writ, do on oath declare, that the plaintiff has a good cause of action against the defendant Horace B. Dunbar therein named, and a reasonable expectation of recovering a sum amounting to twenty dollars exclusive of all costs which have accrued in any former action; and that I believe and have reason to believe, that Horace B. Dunbar the said defendant has property not exempt from being taken on execution, which he does not intend to apply to the payment of the plaintiff's claim; and that I believe, and have reason to believe that he intends to leave the State, so that execution, if obtained, cannot be served upon him.

HARRY H. DUNBAR.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

BOSTON, *Oct. 2d, A. D.* 1899.

Personally appeared the above-named Harry H. Dunbar before me, and made oath to the truth of the above affidavit by him subscribed; and I certify that after due hearing I am satisfied the same is true.

And satisfactory cause having been shown, I authorize the arrest of said Horace B. Dunbar the said defendant, if his arrest is authorized by law to be made after sunset.

Fee, $1.

EDWARD J. JONES,
Master in Chancery.

(10 10 I. R. stamp. Endorsed Oct. 2, 1899.)

97 Municipal Court of the City of Boston.

LOTTIE E. DUNBAR
vs.
HORACE B. DUNBAR.

Plaintiff's Declaration.

And the plaintiff says the defendant made a contract in writing a copy of which is hereto annexed marked "A," whereby the defendant promised to pay the plaintiff the sum of five hundred dollars ($500)

yearly for her support and maintenance, and four hundred dollars ($400) yearly for the support and maintenance of her child, Willie W. Dunbar. And the plaintiff says the defendant owes her under said contract seven hundred forty-nine dollars and ninety cents ($749.90) according to the account hereto annexed marked "B."

By her attorney, FRANK H. STEWART.

Copy Annexed.

"A."

Controversies having arisen concerning the agreement heretofore made between Horace B. Dunbar and Lottie E. Dunbar in September, 1889 in consideration of said Lottie E. Dunbar's forbearing of suit on such controversies, and in settlement of all such controversies and in substitution of said agreement of September 1889 and in further consideration of the release by Lottie E. Dunbar and
98 in satisfaction of all claims under said original agreement,

That Horace B. Dunbar will pay to Lottie E. Dunbar during her life, or until she marries, for her maintenance and support, yearly, the sum of five hundred dollars, and will pay to her yearly for the support and maintenance of her child Harry H. Dunbar the sum of four hundred dollars until he shall attain the age of twenty-one years; and shall pay her yearly for the support and maintenance of her child Willie W. Dunbar the sum of four hundred dollars until he shall attain the age of twenty-one years, all said sums to be paid in equal monthly installments between the first and tenth of each and every month—the first installment being for the month of May 1896, shall be paid between the first and tenth of June, 1896.

And in addition to the foregoing said Horace B. Dunbar agrees to pay the further sum of one hundred dollars between the first and tenth of July, 1896, over and above the installment otherwise due for said month.

And the said Lottie E. Dunbar hereby agrees that she has not nor shall she have any other claim or demand against Horace B. Dunbar for contribution to her support and maintenance or for the support or education of said children save and except as fixed and limited by this agreement.

(Signed) HORACE B. DUNBAR. [SEAL.]
LOTTIE E. DUNBAR. [SEAL.]

Witness:
(Signed) GUSTAVUS H. WALD,
FRANK H. STEWART,
To L. E. D.

99 *Account Annexed.*

"B."

BOSTON, *Oct.* 2, 1899.

Horace B. Dunbar to Lottie E. Dunbar, Dr.

1. To installments due under covenant for alimony from December, 1898, to Oct. 1, 1899, 10 months at $41.66 a month	$416.60
2. To monthly allowance due her for support and maintenance of Willie W. Dunbar, from December, 1898, to Oct. 1, 1899, 10 months at $33.33 a month	333.30
3. Total	$749.90

100 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

[L. S.] To the sheriff of our county of Suffolk or his deputy or any constable of the city of Boston, within our said county, Greeting:

We command you to attach the goods or estate of Horace B. Dunbar, commorant of said Boston, to the value of one thousand dollars: and for want thereof to take the body of the said defendant (if he may be found in your precinct), and him safely keep so that he may be had before our justices of the municipal court of the city of Boston, to be holden at said Boston, within said county of Suffolk, for civil business, on Saturday, the fourteenth day of October, A. D. 1899, at nine of the clock in the forenoon; then and there to answer to Lottie E. Dunbar of Boston in the county of Suffolk, plaintiff, in an action of contract to the damage of the said plaintiff, (as she says) the sum of one thousand dollars, as shall then and there appear, with other due damages. And have you there this writ with your doings therein.

Witness, William E. Parmenter, Esquire, at Boston aforesaid, the second day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

ORSINO G. SLEEPER, *Clerk.*

Copy
Attest:

JOS. A. WILLARD,
Clerk of the Superior Court.

101 [Endorsed:] Municipal court of the city of Boston. For civil business. 1899. No. 4632. Lottie E. Dunbar, pl'f, *vs.* Horace B. Dunbar, d'f't. Damages, $—. Dec. 22 '99, judg't for def't.

Costs:

Writ	1.00
Entry	1.00

Def't's costs:

Att'y	2.50
Term fee	3.00
Trav.	.99
Attend	2.64
Wit.	
	$9.13

Copy from the office of —— ——. For d'f't, Geo. Fred Williams & James A. Halloran, 209 Wash'n St., r'm 50, Boston.

Extra compensation will not be allowed unless the officer's return contains a bill of items, together with his affidavit.

Officer's Return.

SUFFOLK, ss:

BOSTON, *October* 2*nd*, 1899.

By virtue of this writ, I this day arrested the within-named defendant Horace B. Dunbar and afterwards on the same day I had him before Edward J. Jones, Esq., a master in chancery within and for the county of Suffolk before whom he recognized with surety for his appearance before the 14th day of October current before some court having jurisdiction to examine him as a poor debtor. (See magistrate's certificate hereto annexed)

ALBERT C. TILDEN,
Deputy Sheriff.

Fees.

Arrest	1.00
Service	
Travel	.08
Custody & attendance	5.00
	$6.08

Endorsed on cover: File No. 18,407. Massachusetts superior court. Term No. 244. Horace B. Dunbar, plaintiff in error, *vs.* Lottie E. Dunbar. Filed February 18, 1902.